

No. 15592

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United States  
Court of Appeals  
for the Ninth Circuit

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GLEN TITUS,

Appellant,

vs.

MADAM CADIO G. SIGALAS, et al., owners and  
PACIFIC ATLANTIC STEAMSHIP COM-  
PANY, Charterer of the SS Santorini, etc.,  
Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
District of Oregon

FILED

AUG 23 1957

PAUL P. O'BRIEN, CLERK



No. 15592

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellees.



In the District Court of the United States  
for the District of Oregon

Civil No. 7957

GLEN TITUS,

Libelant,

vs.

SS SANTORINI, her engines, tackle and gear, and  
all persons claiming any interest therein, and  
MADAM CADIO G. SIGALAS, et al., own-  
ers, and PACIFIC ATLANTIC STEAMSHIP  
COMPANY, charterer, Respondents.

LIBEL IN REM AND IN PERSONAM WITH  
FOREIGN ATTACHMENT

To the Honorable Judges of the United States Dis-  
trict Court for the District of Oregon, in Ad-  
miralty Sitting:

The libel and complaint of Glen Titus, longshore-  
man, in a cause of personal injury and tort, civil  
and maritime, against the SS Santorini, her en-  
gines, tackle and gear, and all persons claiming  
any interest therein, and Madam Cadio G. Sigalas,  
et al., owners, and/or charterer Pacific Atlantic  
Steamship Company, respectfully shows on informa-  
tion and belief:

Article I.

That during all times herein mentioned the SS  
Santorini was and now is and during the currency  
of process herein, will be, in the port of Coos Bay,  
State of Oregon, and upon navigable waters of the  
United States of America and within the jurisdic-

tion of this Court; that at all times herein mentioned the owner and operator of said vessel was and now is Madam Cadio G. Sigalas, et al., a corporation, company or concern, of Athens, Greece, owned by Greek Citizens, and the charterer was and is Pacific Atlantic Steamship Company, a corporation of the State of Washington, United States of America.

#### Article II.

That at all times herein mentioned libelant was a longshoreman and on or about February 3, 1955, was engaged in assisting to load said vessel with lumber at the Coos Bay Lumber Company dock in the Port of Coos Bay and libelant and other longshoremen were in the employe of a master stevedore, to-wit, Independent Stevedoring Company, who had contracted with said owner and/or charterer to load said vessel, when the libelant met with the injuries and accident hereinafter set forth.

#### Article III.

That while libelant was performing his duties as a longshoreman on said date on deck at No. 2 Hatch on said vessel the preventer wire broke, causing this plaintiff to sustain serious personal injuries and said accident and injuries were caused solely by the unseaworthiness of said vessel and its appurtenances and the negligence of said shipowner and/or operator and/or charterer, their agents, officers or representatives, in that said preventer wire was defective, in that they failed to inspect said wire before using it, in that they used an improper

wire as a preventer, from all of which this libelant was caused severe bruises and contusions to his body and limbs, multiple fractures of his leg, dislocated ankle, a severe tearing, twisting, wrenching of the muscles, tendons, ligaments and soft tissue of his body and limb, physical and mental pain and suffering, from all of which libelant has been and will be rendered sick, sore, nervous and distressed, and has sustained permanent injuries, and his ability to work and perform labor is seriously and permanently impaired, and all to his damage in the full sum of \$40,000.00.

#### Article IV.

That libelant has incurred doctor, hospital and medical expenses and will incur further of the same, and has lost and will lose wages on account of said accident, and libelant reserves the right to plead and prove said special damages at the time of trial.

#### Article V.

That libelant elects to pursue a remedy against a third person, pursuant to the provisions of the Longshoremen's and Harborworkers' Act of the United States and has filed with the United States Department of Labor, Bureau of Employees Compensation, a notice of election to sue.

#### Article VI.

That said owners of said vessel are non-residents of the United States and of the State of Oregon and said owners can not be found within the jurisdiction of this Honorable Court; that said owners

have effects within the jurisdiction of this Court, to-wit, the SS Santorini, a steamship. That said vessel is presently moored at the Port of Coos Bay, Oregon, at what is known as Coos Bay Lumber Company Dock; that said vessel is in the possession of and that person is bailee of said vessel and said person's name is John Doe, the master of said vessel, who holds said vessel in effect as a garnishee.

#### Article VII.

That libelant's residence, domicile and address is Coos Bay, Oregon.

#### Article VIII.

That at the time of the happening of this accident libelant was of the age of 45 years with a life expectancy under the American standard mortality tables of 25.21 years.

#### Article IX.

That all and singular of the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libelant prays that process according to the course of this Honorable Court in a cause of admiralty and maritime jurisdiction may issue against the respondent vessel, SS Santorini, her tackle and gear, and that all persons claiming any interest in said vessel may be cited to appear and answer all and singular of the matters aforesaid; that this Court may be pleased to decree the payment of \$40,000.00 to libelant; that the respondent



vessel, SS Santorini, may be condemned and sold to pay the same; that citation in due form of law may issue against the respondent herein, Madam Cadio G. Sigalas, et al., and Pacific Atlantic Steamship Company, citing it and them to appear and answer in the premises; and in case said respondent owners or charterer can not be found within this jurisdiction then that all goods and chattels belonging to said respondent within the District and in particular a certain vessel known as the SS Santorini, presently berthed at Coos Bay Lumber Company Dock, Port of Coos Bay, Oregon, within this District, with its spare parts and accessories, all in the possession of said John Doe, master of said vessel, be attached by process of foreign attachment in the amount of \$40,000.00, the sum sued for in this libel, with interest and costs and disbursements of the libelant; and that said garnishee, John Doe, master of said vessel, be cited and admonished to appear and answer on oath as to the said effects of the respondent in his hands.

PETERSON & POZZI,

/s/ BERKELEY LENT,

Proctors for Libelant.

Duly Verified.

[Endorsed]: Filed February 9, 1955.

In the District Court of the United States  
for the District of Oregon

Civil No. 7957

GLEN TITUS,

Libelant,

vs.

SS SANTORINI, her engines, tackle and gear, and  
all persons claiming any interest therein, and  
MADAM CADIO G. SIGALAS, et al., owners,  
and PACIFIC ATLANTIC STEAMSHIP  
COMPANY, charterer, Respondents,

SIGALAS and KULUKUNDIS,

Claimant.

### ANSWER

To the Honorable Judges of the United States Dis-  
trict Court for the District of Oregon, in Ad-  
miralty Sitting:

Comes now the respondent, SS Santorini, and  
claimant, Sigalas and Kulukundis, and in answer  
to the libel in rem and in personam filed herein  
admits, denies and alleges:

#### I.

Admits all allegations contained in Article I, ex-  
cept denies that the owner and operator of the SS  
Santorini was and now is Madam Cadio G. Sigalas,  
et al., and alleges that Pacific Atlantic Steamship  
Company, a corporation of the State of Washing-  
ton, United States of America, was only a space  
charterer of said vessel.



II.

Admits all the allegations contained in Article II, except denies that all of the injuries claimed by the libelant occurred on the SS Santorini at said time and place.

III.

Admits that a wire preventer broke at the Number Two Hatch of said vessel, but denies remaining allegations contained in Article III and the whole thereof.

IV.

Said respondent and claimant lack sufficient information to form a belief as to the trust or falsity of the allegations contained in Article IV and therefore deny the same.

V.

Said respondent and claimant lack sufficient information to form a belief as to the trust or falsity of the allegations contained in Article V and therefore deny the same.

VI.

No answer is made to the allegations of Article VI as said allegations are now moot.

VII.

Said respondent and claimant lack sufficient information to form a belief as to the trust or falsity of the allegations contained in Article VII and therefore deny the same.

VIII.

Said respondent and claimant lack sufficient information to form a belief as to the trust or falsity

of the allegations contained in Article VIII and therefore deny the same.

## IX.

Denies that all and singular of the premises are true as alleged in the libel, but admits if true the same would be within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

## X.

For an affirmative answer in defense, respondent and claimant allege that if the libelant received any injuries or damages at the time and place referred to in his libel herein, the same were proximately caused by his own carelessness and negligence in failing to keep a proper lookout, in failing to watch where or how he was moving and in failing to take due care or any care and caution for his own safety and welfare.

Wherefore having fully answered the libel herein this respondent and claimant pray for a decree in their favor dismissing the libel herein and awarding to them what in law and justice they may be entitled to receive.

WOOD, MATTHIESSEN, WOOD &  
TATUM,

/s/ JOHN R. BROOKE,

Proctors for Respondent, SS Santorini and claimant, Sigalas and Kulukundis.

Duly Verified.

Acknowledgment of Service Attached.

[Endorsed]: Filed April 6, 1955.

[Title of District Court and Cause.]

### ORDER

This matter coming on for hearing on respondents' motion to require libelant to produce for inspection portions of a certain preventer wire, libelant appearing by Nels Peterson of his proctors and respondent-claimant appearing by John R. Brooke of its proctors, and the court hearing argument by both parties and being advised in the premises,

It Is Hereby Ordered that libelant produce and deliver to respondent-claimant for inspection that portion of the preventer wire in his possession and that respondent-claimant produce and deliver to libelant for inspection that portion of the preventer wire in its possession.

Dated this 18th day of April, 1955.

/s/ GUS J. SOLOMON,  
Judge.

[Endorsed]: Filed April 21, 1955.

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[Title of District Court and Cause.]

### PRE-TRIAL ORDER

#### Nature of Action

This is a libel in rem and in personam with attachment against the steamship SS Santorini, her engines, tackle and gear, claimed by Sigalas and Kulukundis, owners of said vessel, and against said owners, respondents in personam, and that a general appearance has been made by said owners.

The action is for damages for alleged personal injuries received by libelant and is based generally on the theories of unseaworthiness of the vessel and the negligence of said company.

#### Admitted Facts

(1) That libelant is a resident of the United States and District of Oregon and resides at Coos Bay, Oregon.

(2) That the SS Santorini was in the port of Coos Bay, Oregon, and upon navigable waters of the United States of America and within the jurisdiction of this Court at the time of the service of process herein.

(3) That a general appearance has been made by said owners and operators.

(4) That on and prior to February 5, 1955, libelant was engaged as a longshoreman by Independent Stevedore Company, master stevedores, who were loading said vessel at the Coos Bay Lumber Company dock at Coos Bay and upon navigable waters, and at the time of the accident complained of libelant was working at No. 2 Hatch.

(5) That libelant elected to pursue a remedy against a third party, pursuant to the provisions of the Longshoremen's and Harborworkers' Act of the United States and has filed with the United States Department of Labor, Bureau of Employees Compensation, a notice of election to sue.

#### Contentions of Libelant

(1) Libelant contends that said accident was

caused without any contributing fault or negligence on his part and solely by the defective and unseaworthy condition of said vessel and its appurtenances and by the negligence of said company, its officers, agents and employees, in the following, among other, particulars:

(a) That said vessel was unseaworthy in that a defective, unsafe and improper preventer wire was in use.

(a1) That said vessel was unseaworthy in that said wire broke.

(b) That said vessel was unseaworthy in that a soft wire was used as a preventer rather than hard wire.

(c) That said vessel was unseaworthy in failing to properly locate and have available sufficient pad eyes and cleats for securing preventer wires.

(d) That said owners and operators, their officers, agents and employees, were negligent in failing to supply a non-defective and proper preventer wire.

(e) That said company and owners, its officers, agents and employees, were negligent in equipping said hatch No. 2 booms with soft wire preventers rather than hard wire preventers.

(f) That said defendant company and owners, its officers, agents and employees, were negligent in failing to warn this libelant that improper preventer wire was used.



(g) In failing to provide this libelant with a safe place to work in all the particulars alleged herein.

(2) That as a proximate result of said unseaworthiness and said negligence while a load was on the hook a preventer wire gave way, causing this libelant to fall, causing him severe nervous shock, grievous physical and mental pain and suffering, bruises and contusions to his right leg, a severe tearing, twisting and wrenching of the tendons, ligaments, bones, soft tissue and muscles of his right leg, crushing and fractures of his right leg, dislocated ankle, injuries to his knee, dermatitis and disturbance of urinary function, from all of which libelant was rendered sick, sore, nervous and distressed, and has been caused to sustain permanent injuries, has had his ability to work and perform labor seriously and permanently impaired, will permanently have pain and suffering as a result of said injuries, and all to his damage in the full sum of \$40,000.00.

(3) That as a proximate result of said unseaworthiness and said negligence of said vessel and company, libelant has lost wages to date on account of said injuries in the approximate sum of \$3,000.00 and will lose further wages on account of said injuries.

(4) That at the time of the happening of said injuries libelant was of the age of 45 years with a life expectancy under the American standard mortality tables of 25.21 years.

(5) That at the time of said injuries libelant was regularly employed as a longshoreman and was and had been earning wages in excess of \$100.00 per week.

(6) That libelant's damages, general and special, were proximately caused by the unseaworthiness of said vessel and the negligence of said company, its officers, agents and employees.

(7) That medical expenses in the amount of \$402.50 have been necessarily incurred to date in connection with libelant's injuries, and he will incur further medical expenses.

(8) That libelant denies each of the contentions of respondent except as admitted in libelant's contentions or in the admitted facts.

### Contentions of Respondent

(1) Denies the contentions of libelant.

(2) The proximate cause of said accident was the fault of the independent contracting stevedore company, its officers, agents, and employees, in that it arranged and rigged the gear and so operated the gear as to place undue and excessive strain upon the vessel's gear and particularly the preventer wire.

(3) Libelant was hatch tender and as such was responsible for the safe rigging and the manner in which the longshoremen performed their work and that the sole proximate cause of the accident was libelant's own negligence in allowing, directing, and

permitting the work to be done by the longshoremen in such a manner that as a result of arrangement of the rigging and the operation of the cargo gear, excessive strain was placed on the preventer wire.

(4) Libelant was negligent in failing to maintain proper housekeeping at said hatch and particularly in allowing hatch boards to be scattered on the inshore side of said hatch, in failing to maintain a proper lookout, and in failing to avoid tripping on the hatch boards and said negligence was the proximate cause of libelant's injuries and damages.

(5) In the event the aforesaid negligence of libelant was not the sole proximate cause, then it was at least a major contributing cause, and that libelant was guilty of contributory negligence to be considered in proportional mitigation of his damages.

(6) (Admitted Fact) At the time of the accident libelant, as well as the other longshoremen working said vessel, were employees of the Independent Stevedoring Co.

(7) The said preventer wire that carried away had been placed on said vessel's gear at the No. 2 hatch the day before libelant's accident and the longshoremen had arranged and rigged the gear including the securing of the preventer wires at said hatch.

(8) Among the duties of libelant at the time of



the accident was to see that the gear at the No. 2 hatch of said vessel was rigged and operated in a safe manner and the longshoremen at the No. 2 hatch had a safe place to work.

Libelant's Exhibits

1. Reserve for hospital records.
2. Medical notes, memoranda, etc., of Dr. ———.
3. X-rays.
4. (a) Wire cable.
5. (b) Wire cable.
6. Accident report.
7. Pictures.

Respondents' Exhibits

1. X-rays.
2. Medical notes, memoranda, etc., of Dr. ———.
3. (a) Wire cable.  
(b) Wire cable.  
(c) Manila rope.  
(d) Manila rope.
4. Pictures.
5. Pacific Coast Safety Code.
6. Deposition of Libelant.
7. Deposition of John Kyriacos.
8. Machinery handbook.
9. Wire rope booklet.
10. Notes of metalurgist.
11. Vessel's loading records and lumber book.
12. Plastic holders (2).

The exhibits heretofore referred to have been

identified and received as trial exhibits, and the parties agree, with the approval of the Court, that no further identification of exhibits is necessary.

In the event that said exhibits, or any thereof, should be offered in evidence at the time of trial, such exhibits are subject to objection only on the grounds of relevancy, competency and materiality.

#### Expert Testimony

Libelant reserves the right to call expert witnesses. Respondent reserves the right to call expert witnesses.

This order represents the result of pre-trial conferences held between the parties, their proctors and judge presiding in open Court.

It Is Hereby Ordered that the foregoing constitutes the pre-trial order in the above entitled cause and supersedes the pleadings in the within cause, but may be amended after signature or during trial only upon agreement of the parties or by order of this Court to prevent manifest injustice.

Dated and Signed in open Court this 16th day of January, 1956.

/s/ CHASE A. CLARK,  
United States District Judge.

/s/ NELS PETERSON,  
Of Proctors for Libelant.

/s/ JOHN R. BROOKE,  
Of Proctors for Respondents.

[Endorsed]: Filed January 16, 1956.

[Title of District Court and Cause.]

MINUTES OF THE COURT

January 17, 1956

Now at this day come the parties hereto, by their proctors as of yesterday. Whereupon, the trial of this cause before the Court is resumed. The Court having heard the evidence adduced, and the arguments of proctors, renders its opinion herein, and directs that findings of fact and decree be prepared in accordance therewith.

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[Title of District Court and Cause.]

MINUTES OF THE COURT

February 6, 1956

Libelant appearing by Mr. Frank Pozzi, of proctors, and the respondents by Mr. John R. Brooke, of proctors. Whereupon, the Court withdraws its opinion previously rendered herein, and takes this case under advisement.

It Is Ordered that the libelant be, and is hereby, allowed ten days after the transcript is furnished, within which to file his brief; that the respondents be, and are hereby, allowed ten days thereafter, within which to file their answering brief, and that the libelant be, and is hereby, allowed five days thereafter within which to file his reply brief.

[Title of District Court and Cause.]

## LIBELANT'S BRIEF

### Introduction

The Court has requested that we submit to it a memorandum in the within case.

This action is one based upon unseaworthiness and negligence against a third party ship owner and operator, and the vessel itself, through a libel in rem as well as in personam with foreign attachment. The Court will recall that the vessel, the SS Santorini, was lying port side to a dock at Coos Bay, Oregon, and that libelant was injured at approximately 12:15 p.m. while his gang was relieving the regular longshore gang at the hatch. The Court will also recall that libelant's severe injuries occurred when the starboard preventer wire gave way and libelant, while trying to get out of the way, received his injuries.

### Points and Authorities

Petterson v. Alaska S.S. Co., (9th CA) 205 F. (2d) 478, 1953 A.M.C. 1405; Aff'd. 347 U.S. 396, 1954 A.M.C. 860;

Seas Shipping Co. v. Sieracki, 328 U.S. 94, 1946 A.M.C. 704;

Pacific Far East Lines v. Williams (9th CA), 1956 A.M.C. 1092;

Grillea v. U. S., 1956 A.M.C. 1009;

Wiel & Amundsen v. Potter, 1956 A.M.C. 147;

Williams v. Lykes Bros. S.S. Co., 1955 A.M.C. 2045;

Ignattuk v. Tramp, etc., 1955 A.M.C. 892.

### Argument

The Court requested respondent to have transcribed its own testimony and it has done so, however, the Court does not have before it the testimony of libelant and the witnesses produced by him. We deem it important then that the Court recall some of their testimony, as well as that of respondent's testimony.

Mr. Titus worked in Gang No. 16. The SS Santorini started working at 1:00 o'clock p.m. on the day preceding the accident complained of. At approximately 4:00 p.m. or 4:30 p.m. in the afternoon of the 4th, the preventer wire on the same boom with which we are here concerned, as well as the rope guy, broke. (Resp. Tr. 34, 35.) The mate, Kayriacos, testified further that he had the boom rerigged and that the longshoremen then worked in the hatch, starting the next morning, and that the accident to Mr. Titus occurred about 12:15 p.m.

The Court saw the complete operation when it saw the moving pictures. I wish at this time to refresh and recall to the Court's memory the fact that the longshoremen were so careful in working this ship that they had even removed the wooden stanchion on the port side at No. 2 Hatch adjacent to the square of the hatch in order not to have to hoist loads over the top of the stanchion. Thus there was a "drift" of at least 35 feet. I believe this is important because it does show the care with which the longshoremen work. This Court must realize that the longshoremen enforce safety strictly in order to protect their own life and limb.



The Court will further remember that libelant's witnesses testified, as well as respondent's mate, that there was only one cleat and two padeyes for both No. 1 and 2 Hatches on the starboard side. This meant that the wires could not be tied off properly on the bullrail, and constitutes both unseaworthiness and negligence. This helps explain why the wire broke.

Mr. Kayriacos, respondent's mate, testified that he went out immediately after the accident and examined what was left of the wire on the padeye and that the wire had broken at the padeye. (Resp. Tr. 40.) At the same time he started talking about "three feet" but he explains this at Resp. Tr. 42 in that the "three feet" to which he was referring was that the bullrail was three feet above the deck. This testimony is somewhat in conflict with one or two of libelant's witnesses who testified that it was about 6 inches to a foot or a foot and a half from the padeye where the wire rope broke. Therefore, it can be seen that respondent's own witness made a much stronger case for libelant than libelant's own witnesses. This is made clear by the testimony of the so-called "expert", namely Mr. Czyzewski, who testified that when a wire rope leads down from a boom to a padeye and takes a sharp turn, that the wire is substantially weakened to a space of about six inches from the apex. (Resp. Tr. 13.)

The Court advised us at the time of oral argument that he was familiar with the rule to be applied to the testimony of experts, and so we see no necessity for reviewing those cases again.

Since this Court is sitting in admiralty in this case, it must apply the admiralty rules. In other words, if the case falls within the admiralty framework the libelant is entitled to recover. It is the rule in admiralty that if the gear is being used "in a customary and usual manner" and it breaks the only logical inference is that it would not break unless it was defective, i.e., unless it was unseaworthy. As was said in the Petterson case, *supra*:

"While being put to a proper use in a proper manner, the block broke causing the injuries complained of to Petterson. There was no proof as to the condition of the block prior to its use other than what may be implied from the accident.

The court below granted a decree for the Owner on the ground that it was not shown that the block belonged to or was a part of the gear of the *Susitna*. Petterson's argument that liability should be imposed even if the gear belonged to the Stevedoring Co. was rejected by the court on the ground that *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 1946 A.M.C. 698, did not go so far.

The Owner contends that as there was no proof of the unseaworthiness of the block, Petterson cannot recover. This contention is without merit. The Court below found that the block was used "in a customary and usual manner" and that it "was of a type ordinarily and customarily used and proper for the use to which it was being put upon the occasion in question". (R. 14-15.) In admiralty appeals, findings of fact based upon credibility of witnesses who testified in open court will not be set aside.

Crowley Launch & Tugboat Co. vs. Silmington Transp. Co., 1941 A.M.C. 449, 117 F. (2d) 651, 653 (9 Cir.). But an admiralty appeal is a trial de novo, Olsen vs. Alaska Packers Assn., 1940 A.M.C. 1443, 114 F. (2d) 364 (9 Cir.), and this court may make its own inferences from the facts as found where it does not upset the findings based upon the credibility of witnesses. If the block was being put to a proper use in a proper manner, as found by the district judge, it is a logical inference that it would not have broken unless it was defective—that is, unless it was unseaworthy.

In making this inference we do not reply upon the tort doctrine of *res ipsa loquitur*, although the result is similar. *Res ipsa loquitur* is a doctrine of causation usually applied in cases of negligence. Here we are dealing with a species of strict liability regardless of fault. *Seas Shipping Co. vs. Sieracki*, supra, 328 U.S. at 94, 1946 A.M.C. at 704. It is not necessary to show, as it is in negligence cases, that the shipowner had complete control of the instrumentality causing the injury, see *O'Mara v. Pennsylvania R. Co.*, 95 F. (2d) 762 (6 Cir.); or that the result would not have occurred unless someone were negligent, see *Pillars vs. R. J. Reynolds Tobacco Co.*, 117 Miss. 490, 78 So. 365. It is only necessary to show that the condition upon which the absolute liability is determined—unseaworthiness—exists. *Mahnich vs. Southern S.S. Co.*, 331 U.S. 96, 1944 A.M.C. 1.”

Further, the *Petterson* case, supra, also holds that the doctrine of control does not exist and that the



ship owner is liable for unseaworthiness, even though it arises after control of the ship or that part which includes the unseaworthy condition has been surrendered to the stevedores. The Court should consider this rule in considering whether or not prior use of the wire by the stevedores that morning had caused it to be weakened. In other words, even though it had been weakened by prior use of the stevedores, nevertheless, this does not in any way absolve the shipowner from fault and responsibility. Thus, even though it might be considered as a transitory condition that fact does not absolve respondent from liability. (*Pacific Far East Lines, Inc. v. Williams*, (9th CA) decided May 23, 1956).

As was said in *Williams v. Lykes Bros. Steamship Co.*, 1955 A.M.C. 2045:

“Unseaworthiness of the vessel alone fixes liability on the vessel owner where that unseaworthiness is the proximate cause of the damage in suit. *Seas Shipping Co. vs. Sieracki*, 328 U.S. 85, 1946 A.M.C. 698. Where, as here, without apparent cause, a supporting member of the deck of a vessel falls over and injures a longshoreman working in the hold of the vessel, the vessel is unseaworthy and her owner is responsible in damages for the injury. *Mahnick vs. Southern Steamship Co.*, 321 U.S. 96, 1944 A.M.C. 1.”

#### Conclusion

This Court has once decided this case and we believe the decision to be accurate and as said by Judge Claude McColloch at the conclusion of the

trial in the Potter case, supra, it is a case "within the modern framework of admiralty decisions".

Libelant sustained the burden not only as to unseaworthiness, but also as to negligence, both as to defective wire and because of inadequacy of the cleating for the rigging which latter contention of libelant was never at any time disputed in the testimony by respondent. Verily, this was done by respondent because it is undisputed that the cleating and placing of the padeyes was improper and inadequate.

At the trial, when the Court first decided the case, it allowed the libelant only \$5,000.00 in general damages. We request the Court to reconsider the allowance of the amount of general damages in that we believe it to be very inadequate. We wish to call to the attention of the Court in the decisions cited by libelant the damages allowed for various injuries. The writer urges upon this Court that it allow libelant \$25,000.00 in general damages. The Court will recall the testimony that libelant's injury is a serious one to a working man who must stand on his feet, climb or lift weights, and that his condition will not improve but will get worse as time goes by.

Respectfully submitted,

PETERSON & POZZI and  
BERKELEY LENT,

/s/ By FRANK H. POZZI,  
Attorneys for Libelant.

[Endorsed]: Filed January 8, 1957.

[Title of District Court and Cause.]

OPINION

Clark, D. J.

This is an action brought by libelant Titus against the SS Santorini, her engines, tackle and gear and her owners and the charterer. The vessel was lying in port at Coos Bay, Oregon, to load a cargo of lumber. Libelant was an employee of the Independent Stevedoring Company, an independent contractor, who had contracted to do the loading of the ship.

During the process of loading the ship, February 5, 1955, the preventer wire and rope guy for the starboard boom at the No. 2 hatch parted, allowing the load on the cargo hook to swing. The libelant, who was then acting as hatchtender, in order to avoid being struck by the cargo, ran across the deck, slipped and fell, causing his present injuries.

The libelant seeks to recover damages for his injuries on the grounds of the unseaworthiness of the vessel and the negligence of the respondent owners and operators.

Upon the completion of the trial of this case, the Court announced its verdict in favor of the libelant and asked for Findings and Judgment in accordance therewith. Thereafter, the Court withdrew its opinion and asked counsel to submit briefs on the questions of the vessel's unseaworthiness and the negligence of the owners, feeling that the Court should further deliberate those matters.

While the Court asked only for a transcript of

the Respondents' testimony, the Court has studied the complete record and all the evidence presented, together with brief presented by respective counsel.

There is no question but what an employee of the stevedoring company can recover from the ship and its owners, for injuries received as a proximate result of the vessel's unseaworthiness or the negligence of its owners and operators, *Seas Shipping Co. vs. Sieracki*, 328 U.S. 94. The existence of unseaworthiness and the issue of negligence are the only questions involved here.

The rule is that the burden is with the libellant to prove the allegations of its petition. The libellant here proceeded on the theory, apparently, that upon a showing that the gear was being used "in a customary and usual manner" and it breaks, the inference is that it would not break unless it was defective or unseaworthy, and relies upon the case of *Petterson vs. Alaska S.S. Co.*, (9th Cir.) 205 F. 2d. 478; 1953 A.M.C. 1405; affirmed 347 U.S. 396, 1954 A.M.C. 860. In the *Petterson* case a block, which was being used in the loading operation, broke. There was no proof as to the condition of the block prior to its use other than what may be implied from the accident itself.

In the present case the evidence is to the effect that the preventer wire which gave way was brand new. The preventer wire on the same boom with which we are here concerned had given way the day preceding this break and the evidence shows that the boom was rerigged with brand new unused wire of a hard European type. The metalurgi-



cal expert, called by respondent, as a finding in laboratory tests, testified that the parted wire was not defective. He was unable to find any wear, corrosion, brittleness or other defect in the wire, but concluded that the wire had broken because of tensile pull. The force exerted on it was greater than its breaking strength.

There is no great conflict in the evidence, although there appears to be some controversy over how far from the pad eye the wire broke, the contention being that if it broke within six inches of the pad eye the break would have been the result of a weakening effect caused by the bend at the pad eye. The evidence clearly shows the break occurred at least a foot or foot and a half above the pad eye.

There is some further contention that there was negligence because there was only one cleat forward of the pad eye whereas there should have been two; that every time the wire went around a cleat its strength was increased and so with more cleats this wire would have been stronger. The record shows that ships of this type have only one cleat, that was not unusual and the ship was rigged in the ordinary and customary manner where there is only one cleat forward of the pad eye.

The question here finally resolves itself into a determination of whether the libelant can recover for alleged injuries by showing that the gear was being used, and the loading was being done, in a usual and customary manner; a break occurred, and as a result the libelant was injured, in the face of

testimony presented by the respondent that the wire which broke was not defective—but that it was seaworthy.

In other words, will an inference that the vessel was unseaworthy arising from the fact that a preventer wire broke, prevail when there is an affirmative showing that there was no defect in the wire?

The Court is not concerned with the allegations of negligence as there was no negligence whatsoever shown in this case.

As has been stated the burden rests on the libelant to prove the allegations of unseaworthiness, and where there is nothing shown to the contrary, it may be presumed that was the case merely because the accident happened while the gear was being used in the usual and customary manner. However, here the presumption is overcome with evidence to the contrary, making it necessary that there be some further affirmative showing on the part of the libelant that the unseaworthiness alleged existed. There is no such showing here.

Witnesses for libelant testified that they didn't know why the wire and guy rope broke, but yet the break occurred. The load was not too heavy for the size of wire used, and the wire was new without defect. The record shows, further, that a strand of wire from the point at which the break occurred was taken by the libelant to a metallurgical expert for analysis as to cause of the break, and yet that wire was not produced and that expert witness did not appear on libelant's behalf. There was some suggestion that the break could have been

caused by tight lining—one winch pulling against the other until the force exerted was greater than the strength of the wire causing it to give way. It should be noted that this was only a suggestion; there is no evidence in the record that such was the case.

The Court in the Petterson case, *supra*, said that in cases of this type we deal with a species of strict liability regardless of fault. "It is only necessary to show that the condition upon which the absolute liability is determined—unseaworthiness—exists."

The evidence does not support a finding of unseaworthiness.

To say the respondents were liable in a fact situation such as exists here would broaden the liability even beyond that of the Petterson case, *supra*.

Attorneys for Respondents may prepare Findings of Fact, Conclusions of Law and Judgment, submitting original to the Court and serving a copy on opposing counsel.

[Endorsed]: Filed January 8, 1957.

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[Title of District Court and Cause.]

### PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having come on for trial before me, the libelant appearing in person and by and through Frank H. Pozzi, of proctors, claimant and respondents appearing by and through Wood, Matthiessen, Wood & Tatum, Erskine Wood and

John R. Brooke of proctors, witnesses having been sworn and testified, exhibits having been admitted in evidence, arguments of proctors having been had, and the Court being fully advised in the premises, hereby makes its findings as follows:

### Findings of Fact

#### I.

That libelant is a resident of the United States and of the District of Oregon within the jurisdiction of this court, and resides in the City of Coos Bay, Coos County, State of Oregon.

#### II.

That a general appearance has been made by respondents, Sigalas and Kulukundis, and this court has general jurisdiction over said company for the purposes of this cause. That said company was the owner and operator of the said SS Santorini at all times herein mentioned.

#### III.

That the respondent vessel, SS Santorini, was in the port of Coos Bay, Coos County, Oregon, and upon navigable waters of the United States and within the jurisdiction of this court at the time of service of process.

#### IV.

That on February 5, 1955, libelant was engaged as a longshoreman in the capacity of a winch driver aboard said vessel and at the time of the accident was acting as hatch tender, and his employer was a master stevedore, to-wit, Independent Stevedore Company, who was loading said vessel at the Coos



Bay Lumber Company Dock at Coos Bay, and at the time of the accident libelant was working as hatch tender at No. 2 Hatch aboard said vessel, which was a liberty type vessel.

#### V.

That libelant sustained an accident aboard said vessel at said Hatch No. 2 at approximately 12:15 p.m. on said date, when a defective preventer wire gave way, causing libelant to slip and fall in trying to get out of the way of the swinging gear, and causing him severe permanent personal injuries, and that his injuries were caused by the unseaworthiness of the vessel and the negligence of said respondent owners and operators.

#### VI.

That at the time and place of said accident, respondent company was negligent and said vessel was unseaworthy because the ship's gear and appurtenances and the preventer wire were defective, and said preventer wire was in use at the time and place of the accident.

#### VII.

That at the time and place of said accident said vessel was unseaworthy and respondent company was negligent in that there was no place to secure the preventer wire in any manner, other than it was secured, because there was an insufficient number of cleats located on the rail.

#### VIII.

That at the time and place of said accident said

respondent company was negligent in failing to provide libelant with a safe place to work.

### IX.

I find that libelant has incurred doctor, hospital and medical expenses to date in the sum of \$402.50 as a proximate result of said accident.

### X.

I find that at the time of the happening of said accident, libelant was earning in excess of \$100.00 per week, and as a proximate result of said accident has lost wages to the date of trial in the sum of \$2,050.00.

### XI.

I find that as a proximate result of said unseaworthiness of said vessel and said negligence of said company, that while a load was on the cargo hook, the preventer wire gave way causing libelant to fall causing him severe nervous shock, physical pain and suffering, bruises and contusions to his leg, a severe tearing, twisting and wrenching of the tendons, ligaments, bones, soft tissue and muscles of his leg, crushing fractures of his leg, dislocated ankle, from all of which libelant was rendered sick, sore, nervous and distressed and has been caused to sustain severe permanent injuries, and that his ability to work and perform labor has been permanently impaired. I find that at the time of the happening of the accident libelant was a healthy, robust, physically able man of the age of 45 years with a life expectancy under the standard mortality

tables of 25.21 years, and was capable of engaging in strenuous physical labor.

XII.

I find that libelant, himself, was not negligent in any respect.

XIII.

That libelant elected to pursue a remedy against a third party pursuant to the provisions of the Longshoremen's and Harborworkers' Compensation Act and has filed with the United States Department of Labor, Bureau of Employees' Compensation, Notice of Election to Sue.

Based upon the foregoing Findings of Fact the Court makes the following:

Conclusions of Law

I.

That this court has jurisdiction of the cause and the subject matter and that the respondent Sigalas and Kulukundis has submitted itself to the jurisdiction of this court.

II.

That the injuries sustained by libelant in said accident of February 5, 1955, were caused solely by the negligence of said owners and operators of said vessel and the unseaworthiness of said vessel and its appurtenances.

III.

That libelant himself was not contributorily negligent.

## IV.

That libelant is entitled to a decree awarding him special damages in the sum of \$2,452.50, and general damages in the sum of \$5,000.00, and recovery of his costs and disbursements incurred herein.

Dated this . . . . day of January, 1956.

.....

United States District Judge.

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[Title of District Court and Cause.]

## PROPOSED DECREE

This matter coming on regularly for hearing before the Honorable Chase A. Clark, Judge of the above entitled Court, testimony having been adduced by parties, arguments having been made, the Court having made its findings of fact and conclusions of law, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that libelant, Glen Titus, have of and recover judgment against respondents, the SS Santorini, her engines, tackle and gear, and all persons claiming any interest therein, and Sigalas and Kulukundis, in the sum of \$5,000.00 general damages, and the further sum of \$2,452.50 special damages, with interest at the rate of six (6%) per cent per annum from the date of this decree until fully paid, and

It Is Further Ordered, Adjudged and Decreed that libelant have of and recover judgment against respondents for his costs and disbursements taxed in the sum of \$. . . . ., and

It Is Further Ordered, and Decreed that upon payment of the Decree and costs and obligations taxed herein, that respondents, the SS Santorini, her engines, tackle and gear, and all persons claiming any interest therein, and Sigalas and Kulkundis, and their sureties, shall be relieved from all further obligations from such stipulations as they may have filed in this cause.

Dated this . . . . day of January, 1956.

.....

United States District Judge.

[Title of District Court and Cause.]

**OBJECTIONS AND AMENDMENTS TO RESPONDENTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Comes now libelant and objects to certain of claimant's and respondents' Proposed Findings of Fact and Conclusions of Law, and requests amendments thereto as follows:

**I.**

Objects to that portion of paragraph VI of the Proposed Findings of Fact that states that "The preventer wire that parted at the time and place of libelant's injury was brand new and without defect," and that "There was no wear, corrosion, brittleness or other condition which would render the wire unseaworthy," and that "It was of proper size and strength for the work for which it was being used".



## II.

Objects to that portion of paragraph VIII of the Proposed Findings of Fact which states that the "tension and strain \* \* \* was equalized".

## III.

Objects to all of paragraph IX of the Proposed Findings of Fact, and it should be amended by reciting therein that the angle of the preventer wire at the pad eye caused a break in the preventer wire; that there was an insufficient number of cleats and pad eyes, and that the vessel was unseaworthy and the respondents and claimant were negligent.

## IV.

Objects to all of paragraph XI of the Proposed Findings of Fact, and they should be amended to read: that the preventer wire was unseaworthy, defective, and that respondents and claimant were negligent.

## V.

Objects to all of paragraph XII of the Proposed Findings of Fact and moves to amend it by reciting that the rope-guy parted because of its stretch after the preventer wire broke, which caused it to snap.

## VI.

Objects to all of paragraph XIII of the Proposed Findings of Fact and moves to amend it by reciting that libelant sustained severe personal injuries proximately caused by the negligence of respondents and claimant and by the unseaworthiness of the vessel.

VII.

Objects to paragraph XIV of the Proposed Findings of Fact and the same should recite that libelant sustained general damages in the sum of \$15,000.00 and special damages in the sum of \$2,452.50.

VIII.

Objects to all of paragraphs II, III, IV and V of respondents' and claimant's Proposed Conclusions of Law.

PETERSON, POZZI & LENT,  
/s/ By F. H. POZZI,  
Attorneys for Libelant.

[Endorsed]: Filed January 16, 1957.

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United States District Court  
District of Idaho

Chase A. Clark, Chief Judge  
Chambers—Boise, Idaho

1 March 1957

Mr. R. DeMott, Clerk  
United States District Court  
United States Post Office & Courthouse  
Portland, Oregon

Re: Titus vs. SS Santorini et al. Civil Number  
7957.

Dear Mr. DeMott:

Enclosed herewith for filing are Findings of Fact and Conclusions of Law and Decree in the above-entitled case which Judge Clark has signed. I am also sending you the original of the objections



filed by the Libelant. The Court felt that by signing the Findings and Conclusions and Decree he in effect overrules the objections, so there is no specific order overruling the objections. Should such an order be the practice in your District, kindly advise and we will forward it to you.

Best wishes to your staff.

Sincerely,

/s/ Ina Mae Wheeler,  
Law Clerk.

Cc. John R. Brooke

Frank H. Pozzi

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having come on for trial before me, the libelant appearing in person and by and through Frank H. Pozzi, of proctors, claimant and respondents appearing by and through Wood, Matthiessen, Wood & Tatum, Erskine B. Wood and John R. Brooke of proctors, witnesses having been sworn and testified, exhibits having been admitted in evidence, arguments of proctors having been had, and written briefs submitted, and the Court being fully advised in the premises, hereby makes its findings of fact and conclusions of law as follows:

### Findings of Fact

#### I.

Libelant is a resident of the United States and

of the District of Oregon, within the jurisdiction of this Court, and resides in the City of Coos Bay, Coos County, State of Oregon.

## II.

A general appearance has been made by claimant, Sigalas and Kulukundis, and this Court has jurisdiction over said company for the purposes of this suit. Said company was the owner and operator of the said SS Santorini at all times herein mentioned. Respondents Madam Cadio G. Sigalas, et al., and Pacific Atlantic Steamship Company did not have or claim any interest in the SS Santorini at the time and place of libelant's accident, and the record does not show that they had anything to do with the operation of said vessel.

## III.

The respondent vessel, SS Santorini, is a Liberty type ocean cargo vessel, and was in the Port of Coos Bay, Coos County, Oregon, and upon navigable waters of the United States and within the jurisdiction of this Court at the time of service of process.

## IV.

On February 5, 1955, libelant was engaged as a longshoreman in the capacity of a winch driver aboard said vessel, and at the time of the accident was acting as hatch tender at No. 2 hatch of said vessel, and his employer was an independent contracting master stevedore, to-wit: Independent Stevedore Company, which was loading said vessel at

the Coos Bay Lumber Company Dock at Coos Bay, Oregon.

#### V.

Libelant sustained an injury aboard said vessel at the No. 2 hatch at approximately 12:15 p.m. on said date, when the preventer wire and rope guy for the forward starboard boom for that hatch parted. This caused the boom and the load of lumber the boom was lifting to swing, and libelant, in order to avoid being struck by the load, ran across the deck, slipped and fell, doing injury to his right ankle and leg.

#### VI.

The preventer wire that parted at the time and place of libelant's injury was brand new and without defect. There was no wear, corrosion, brittleness or other condition which would render the wire unseaworthy. It was of proper size and strength for the work for which it was being used.

#### VII.

The rope guy that parted at the time and place of libelant's injury was brand new and without defect. There was no wear, rot, tear or other condition which would render the rope guy unseaworthy. It was of proper size and strength for the work for which it was being used.

#### VIII.

Prior to the accident, the preventer wire and rope guy had been rigged by the longshoremen, employees of the said master stevedore, so the tension or strain on each was equalized. This is the usual

and regular practice when loading or discharging cargo on Liberty type ships.

### IX.

The preventer wire that parted had been secured at the ship's rail by being passed through a pad eye and then forward to a cleat. The break in the preventer wire occurred at least a foot to a foot and a half above this pad eye. The break occurred at a point well beyond any possible weakening effect caused by the angle of the preventer wire at the pad eye. The angle at the pad eye did not cause or contribute to the breaking.

### X.

Libelant had a strand from the part of the preventer wire submitted to a metallurgist prior to the trial, but did not offer this strand of wire into evidence, nor did he call the metallurgist to testify.

### XI.

The preventer wire and rope guy were seaworthy and free of any defect. Respondents and claimant were not negligent.

### XII.

The preventer wire parted because of a tensile pull, that is, the force exerted on the preventer wire was greater than its breaking strength. The rope guy also parted because the force exerted on it was greater than its breaking strength.

### XIII.

Libelant's injuries were not proximately caused by any negligence on the part of respondents or

claimant or by any unseaworthiness of the SS Santorini.

#### XIV.

Although I have found for the respondents and claimant and against the libelant, I am fixing his total damages in the amount of \$7,452.50, of which \$2,050.00 is lost wages, \$402.50 are hospital and medical expenses, and the remaining \$5,000.00 are libelant's general damages.

Based upon the foregoing Findings of Fact, the Court makes the following

#### Conclusions of Law

##### I.

This Court has jurisdiction of the cause and of the subject matter, and parties.

##### II.

There was no negligence on the part of the respondents or claimant, its vessel, officers or crew, and the SS Santorini and its appurtenances were not unseaworthy.

##### III.

Libelant's accident of February 5, 1955, and resulting injuries were not caused by any negligence of respondents or claimant or unseaworthiness of the SS Santorini and its appurtenances.

##### IV.

Libelant is not entitled to recover his damages from respondents or claimant.

##### V.

Respondents and claimant are entitled to a decree



in their favor and against libelant, dismissing the libel herein with prejudice, exonerating and holding for naught claimant's stipulation to abide by the decree and for costs, and discharging the surety thereon, and awarding respondents and claimant recovery of their costs and disbursements incurred herein.

Dated: March 1st, 1957.

/s/ CHASE A. CLARK,

United States District Judge.

[Endorsed]: Filed March 4, 1957.

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In the United States District Court  
for the District of Oregon

Civil No. 7957

GLEN TITUS,

Libelant,

vs.

SS SANTORINI, her engines, tackle and gear, and  
all persons claiming any interest therein, and  
MADAM CADIO G. SIGALAS, et al., owners,  
and PACIFIC ATLANTIC STEAMSHIP  
COMPANY, charterers, Respondents.

SIGALAS AND KULUKUNDIS, Claimant.

### DECREE

This suit coming on regularly for trial before the Honorable Chase A. Clark, Judge of the above entitled Court, libelant appearing by Frank H. Pozzi



of his proctors, and respondents and claimant appearing by Erskine B. Wood and John R. Brooke of their proctors, the pre-trial order having been presented and approved by proctors of the parties and signed by the Court, and the parties having proceeded to trial, and the Court having heard and considered the evidence, statements and briefs of the proctors, and having rendered its written opinion and having made separate Findings of Fact and Conclusions of Law, and being advised in the premises, now therefore,

It Is Hereby Considered, Ordered and Decreed that libelant Glen Titus take nothing from and against respondents, SS Santorini, her engines, tackle and gear, and all persons claiming any interest therein, and Madam Cadio G. Sigalas, et al., owners, and Pacific Atlantic Steamship Company, charterer, and claimant, Sigalas and Kulukundis, and the libel herein be and it hereby is dismissed with prejudice; and it is further

Considered, Ordered and Decreed that said respondents and claimant have and recover from and against said libelant their costs and disbursements taxed in the sum of \$425.42, and it is further

Considered, Ordered and Decreed that claimant Sigalas and Kulukundis' stipulation to abide by and pay the decree and for costs, filed herein, is exonerated and held for naught, and said claimant and its surety are hereby relieved from all further obligations on said stipulation, and upon libelant's payment to respondents and claimant of the amount of their costs and disbursements taxed herein, libel-

ant's cost bond filed herein will be exonerated and the surety thereon discharged.

Dated this 1st day of March, 1957.

/s/ CHASE A. CLARK,  
U. S. District Judge Sitting in  
Admiralty.

[Endorsed]: Filed March 4, 1957.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the libelant, Glen Titus, appeals to the United States Court of Appeals for the Ninth Circuit from the final decree and the whole thereof entered herein on the 1st day of March, 1957, by the terms of which the libel herein was dismissed and libelant was denied recovery of damages from respondents, SS Santorini, her engines, tackle and gear, and all persons claiming any interest therein, and Madam Cadio G. Sigalas, et al., owners, and Pacific Atlantic Steamship Company, charterer.

Dated this 10th day of April, 1957.

PETERSON, POZZI & LENT,  
/s/ RALPH N. DUNCANSON,  
Of Proctors for Libelant.

Acknowledgment of Service Attached.

[Endorsed]: Filed April 23, 1957.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

We, the undersigned, jointly and severally acknowledge, that we, our administrators, successors and assigns are bound to pay to the respondent and claimant the full and just sum of Two Hundred Fifty and No/100 (\$250.00) Dollars.

The Condition of This Bond Is Such, That,

Whereas, the libelant, Glen Titus, has appealed to the Circuit Court of Appeals for the Ninth District by notice of appeal filed April 10th, 1957, if the libelant shall pay all costs adjusted against him if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if the judgment be modified, then this bond is to be void, but if the libelant fails to perform this condition payment of the amount of this bond shall be due forthwith.

Signed, sealed and dated this 13th day of May, 1957.

[Seal] FIDELITY AND DEPOSIT COMPANY OF MARYLAND,  
/s/ By CLARENCE D. PORTER,  
Attorney in Fact.

Countersigned:

/s/ CLARENCE D. PORTER,  
Resident Agent.

[Endorsed]: Filed May 21, 1957.

[Title of District Court and Cause.]

ORDER

Based on the motion of libelant on file herein,  
It Is Hereby Ordered that libelant be, and he hereby is, granted 40 days from the date of this order in which to docket the above entitled cause in the United States Court of Appeals for the Ninth Circuit.

Dated this 15th day of May, 1957.

/s/ CHASE A. CLARK,  
United States District Judge.

[Endorsed]: Filed May 21, 1957.

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[Title of District Court and Cause.]

ORDER

Upon the motion of Libelant Appellant and for cause shown, the Clerk of this Court is hereby Ordered to mail with the record and the transcript of appeal all of the exhibits received in evidence in the above entitled cause to the Clerk of the United States Court of Appeals for the Ninth Circuit.

And It Is So Ordered.

Dated this 10th day of June, 1957.

/s/ CHASE A. CLARK,  
United States District Judge.

[Endorsed]: Filed June 12, 1957.

[Title of District Court and Cause.]

### DOCKET ENTRIES

1955:

- Feb. 9—Filed libel in rem and personam with foreign attachment.
- 9—Filed stipulation for costs.
- 9—Issued monition with foreign attachment—to marshal.
- 9—Filed warrant of arrest and monition—to marshal.
- 11—Filed claim of vessel by owners.
- 11—Filed general appearance of Sigalas and Kulukundis.
- 11—Filed stipulation to abide decree and for costs.
- 14—Filed warrant of arrest and monition with marshal's return.
- 24—Filed deposition of John Kyriocas.
- Mar. 28—Filed monition with marshal's return—unserved.
- Apr. 6—Filed motion of respondent and claimant to increase libelant's stipulation for costs.
- 6—Filed motion of respondent and claimant to produce for inspection.
- 6—Filed answer of respondent and claimant.
- 18—Entered order increasing libelant's stipulation for costs to \$500.00 and order allowing respondent's motion to produce and for inspection. (S)
- 21—Filed order increasing amount of libelant's stipulation.



1955:

Apr. 21—Filed order for production and inspection.

26—Filed stipulation for costs.

May 31—Entered order setting for pretrial conference on June 20, 1955. (S)

June 20—Entered order setting for pretrial conference on June 27, and for trial on August 14. (S)

27—Lodged pretrial order and one copy.

27—Entered order striking from trial docket of August 14. (S)

21—Filed justification of stipulator.

28—Filed deposition of Glen Titus.

Nov. 25—Entered order setting for trial on January 16, 1956. (S)

1956:

Jan. 10—Issued 2 subpoenas, 7 copies—to plaintiff's attorneys.

16—Filed and entered pretrial order. (Clark)

16—Record of trial. (Clark)

17—Record of trial and opinion. (Clark)

17—Filed exhibits. Libelant's 3a to d, f to i, 4, 5, 7a to g, 8 and 9, Respondents' 3a, b, c and d, 4a, 7 and 12.

Feb. 1—Filed objections and amendments to libelant's proposed findings of fact, etc., by SS Santorini and claimant.

6—Record of withdrawal of opinion, order allowing libelant 10 days after receipt of transcript to file brief, respondent 10 days thereafter for briefs and libelant 5 days for reply brief. (Clark)



1957:

- Jan. 8—Filed opinion (decision for respondent.)  
(Clark)  
8—Filed libelant's brief.  
8—Filed respondents' brief.  
16—Filed objection and amendments to respondents' proposed findings of fact and conclusions of law.
- Mar. 4—Entered order overruling objections.  
(Clark)  
4—Filed and entered Findings of Fact and Conclusions of Law (dated 3/1/57).  
(Clark)  
4—Filed and entered Decree (dated 3/1/57).  
(Clark)  
7—Filed cost bill.  
11—Costs taxed at \$425.42.
- Apr. 23—Filed notice of appeal.  
23—Filed petition for appeal and order allowing appeal. (Clark)  
23—Filed stipulation for costs.
- May 21—Filed libelant's motion for order to withdraw Stipulation for costs and substitute bond.  
21—Filed and entered order to withdraw Stipulation for cost bond and substitute bond for costs. (Clark)  
21—Filed libelant's motion for extension of time to docket appeal.  
21—Filed and entered order extending time 40 days from May 15, 1957 to docket appeal. (Clark)

1957:

- May 21—Filed designation of record on appeal.  
21—Filed bond for costs on appeal.  
23—Filed and entered order extending time  
for appeal. (Clark)  
23—Filed and entered order substituting bond.  
(Clark)
- June 10—Filed transcript of proceedings.  
12—Filed motion to forward exhibits to Court  
of Appeals. (Clark)  
12—Filed order to forward exhibits to Court  
of Appeals.  
12—Filed supplemental designation of record  
by claimant.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss:

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Libel in rem and in personam with foreign attachment; Answer; Order dated April 18, 1955; Pre-trial order; Order allowing time to file briefs; Record of trial on January 17, 1956; Libelant's brief; Opinion of Judge Clark; Proposed findings of fact and conclusions of law (not filed) Proposed decree (not filed); Objections and amendments to respondents' proposed findings of fact and conclusions of law; Letter dated March 1, 1957; Findings of fact and conclu-

sions of law; Decree; Notice of appeal; Bond for costs on appeal; Order extending time to docket appeal; Designation of record on appeal; Order to forward exhibits to Court of Appeals; Supplemental designation of record by claimant and Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 7957, in which Glen Titus is the libelant and appellant and SS Santorini, her engines, tackle and gear, and all persons claiming any interest therein, and Madam Cadio G. Sigalas, et al, owners, and Pacific Atlantic Steamship Company are the respondents and appellees; that the said record has been prepared by me in accordance with the designations of contents of record on appeal filed by the appellant and the claimant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith the reporter's transcript of testimony filed in this office in this cause. The exhibits will be forwarded by express by the attorneys for the appellants.

I further certify that the cost of filing the notice of appeal, \$5.00 has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 14th day of June, 1957.

[Seal] R. DE MOTT,  
Clerk,

/s/ By THORA LUND,  
Deputy.

In the District Court of the United States  
For the District of Oregon

Civil No. 7957

GLEN TITUS,

Libelant,

vs.

SS SANTORINI, her engines, tackle and gear, and  
all persons claiming any interest therein, and  
MADAM CADIO G. SIGALAS, et al, owners  
and PACIFIC ATLANTIC STEAMSHIP  
COMPANY, charterer, Respondents,

SIGALAS and KULUKUNDIS, Claimant.

### TRANSCRIPT OF PROCEEDINGS

This matter was heard before the Honorable  
Chase A. Clark, sitting without a jury, at Portland,  
Oregon on January 16, 1956.

Appearances: Peterson and Pozzi, Frank H.  
Pozzi, Esq., 901 Loyalty Bldg., Portland 4, Oregon,  
Proctors for Libelant. Wood, Matthiessen, Wood &  
Tatum, Erskine B. Wood, Esq., John R. Brooke,  
Esq., 1310 Yeon Bldg., Portland 4, Oregon, Proctors  
for Respondent and Claimant. [1]\*

January 16, 1956—10 o'clock A.M.

(By agreement of counsel Dr. John W. Gar-

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\* Page numbers appearing at bottom of page of Reporter's  
Original Transcript of Record.

ner, a witness for the Libelant was called, sworn and testified before the opening statement).

### JOHN W. GARNER

called as a witness on behalf of the Plaintiff, after being first duly sworn testifies as follows:

#### Direct Examination

Q. (By Mr. Pozzi): Will you state your name?

A. John W. Garner.

Q. Are you a duly licensed, practicing physician and surgeon in the State of Oregon?

A. Yes sir.

Q. Where do you maintain an office?

A. 510 Hill Building, Coos Bay.

Q. How long have you been located in Coos Bay?      A. Four years.

Q. What is your background in the practice Doctor?

A. I graduated from the Medical school, University of Iowa in 1943, served three years in the army and during the ensuing four years——

The Court: ——Can't you gentlemen admit the qualifications of this Doctor?

Mr. Brooke: We will admit the Doctor's qualifications.

Q. When did you begin practicing in Coos Bay?

A. I began practicing in Coos Bay in 1951.

Q. And do you belong to any medical societies?

A. Yes sir.

Q. The Coos County Medical Association, The



(Testimony of John W. Garner.)

American Medical Association. Fellow of the American College of surgeons.

Q. Do you limit your practice to any particular type of medicine?      A. Surgery.

Q. Did Glen Titus, the Libelant become a patient of yours in February,—about February 5, 1955?      A. Yes sir.

Q. As a result of what?

A. As a result of an injury to the right ankle.

Mr. Pozzi: I will offer in evidence at this time, pre-trial exhibit 1, being the Coos Bay Hospital record, the Plaintiff or Libelant's hospital record.

The Court: If there is no objection, it may be admitted.

Mr. Pozzi: I will also offer in evidence libelant's exhibits 3a to 3i inclusive which are x-rays. These are pre-trial exhibits.

The Court: They may be admitted.

Q. Where was the patient when you first saw him?

A. In the emergency room at the hospital.

Q. Did you make a physical examination at that time?      A. I did. [4]

Q. What did you find as a result of your physical examination?

A. The general physical examination was within normal limits, the positive findings were confined to the right ankle.

Q. What were the positive findings so far as physical findings were concerned?



(Testimony of John W. Garner.)

A. A backward and outward dislocation at the ankle joint.

Q. Was the patient in pain at that time?

A. Yes, he was.

Q. Was he in a certain amount of shock?

A. No, he was not in shock.

Q. You feel that he was out of that stage?

A. Yes.

Q. Do you recall what time it was when you first saw him at the hospital?

A. I would have to refer to the hospital record. It was around 12:30.

Q. Did you order x-rays taken?

A. Yes sir.

Q. What did the x-ray show, Doctor?

A. Showed a posterior fracture and dislocation of the ankle?

Q. A fracture and also a dislocation?

A. Yes sir.

Q. Where was the fracture location?

A. The fibula was fractured about three centimeters—excuse me, six centimeters above its lower end. The posterior margin of the Tibia was fractured. [5]

Q. The posterior margin is that the posterior Malleolus? A. Yes sir.

Q. Was the fracture of the fibula in the distal end of the shaft? A. That's correct.

Q. Was there any displacement on that fracture?

(Testimony of John W. Garner.)

A. Yes, the fibula was displaced posteriorly as was the posterior malleolus.

Q. Now, Doctor will you step down to the view box. We will hand you exhibits 3a to 3i and I first ask you to select from those x-rays the original x-rays, show them and refer to them by number.

A. The first one I would like to show is pre-trial exhibit 3c. This demonstrates the shaft of long bone of the leg but does not show too well the actual fracture. The next one is pre-trial 3b. This shows the posterior dislocation of the ankle. This bone is called the Talus and normally articulates with this lower surface of the tibia. This bone (indicating) pushed posteriorly and as it goes past it has taken off fragments of this posterior tibia called the posterior malleolus.

Q. This is an original x-ray?                   A. Yes.

Q. Do you also have one that shows the fracture of the fibula?

A. Yes, that can be seen both here and here (indicating).

Q. Does that show the fracture?

A. This distal fracture is displaced posteriorly.

Q. Also does that show and can you show us with the pointer on the right of 3b where the ankle should be,—how the joint should have been if it were normal?                   A. Well, I am sorry—

Q. —Doctor, do you want to show it by another picture?

A. It might be easier. This is an interior-

(Testimony of John W. Garner.)

posterior view through the leg. This way it shows the ankle has been rotated outwardly and then pre-trial exhibit 3e I believe it is, shows the ankle after reduction of the fracture and dislocation and the normal relationship of the talus and tibia has been restored, and the posterior margin of the tibia has been brought in normal relation with the main portion of the bone and the fracture of the tibia has been reduced.

Q. You got a good alignment in that reduction?

A. Yes.

Q. Continue Doctor?

A. This is pre-trial exhibit 3f. Again this is an anterior-posterior view showing the normal relationship restored in that ankle joint, the ankle mortise has been restored and this articulation here (indicating) the talus here and the tibia and fibula.

Q. Now, Doctor, go through the others please.

A. The next film we have is exhibit 3g. It was taken on February 22, 1955, showing the normal relationship in the ankle mortise. We have an oblique view. We got a reduction of this fracture, that was the small posterior [7] margin,—the posterior Malleolus slipped by several centimeters.

Q. Did that stay in that position?

A. Yes sir.

Q. This man developed dermatitis or skin infection in that leg, did he Doctor? A. Yes sir.

Q. And was it necessary to have the cast removed from it? A. Yes sir.

(Testimony of John W. Garner.)

Q. Do you recall when that was,—strike that please,—Referring to the records Doctor, can you tell us first,—I believe this man was in the hospital until February 11?      A. Yes sir.

Q. When did you care for him?

A. All that time.

Q. Did you care for him in the hospital?

A. Yes sir.

Q. Did you apply a cast on him?

A. Yes sir.

Q. What kind of cast did you apply?

A. A short leg cast of plaster of paris.

Q. How long did he wear that?

A. The first cast he wore until the date of discharge and then it was changed, a new cast was put on and that cast was changed. The second was on the 22nd of February?

Q. That is when this 3f was taken?

A. Yes. [8]

Q. What was the reason for changing the cast on the 22nd?

A. He was having a great deal of itching under the cast. There was serious drainage from the upper part of the cast.

Q. When you took the cast off what did you find?      A. Dermatitis.

Q. Did you give some treatment or did you refer him to a Doctor Stephenson?      A. Yes sir.

Q. Doctor Stephenson is now dead, is that correct?      A. Yes sir.

(Testimony of John W. Garner.)

Q. Did you reapply the cast after you took it off on the 22nd?

A. Yes, we reapplied the cast, it was necessary in order,—well, we reapplied the cast, yes.

Q. You were going to say it was necessary to do something?

A. Three weeks later it was necessary to remove that cast and just have a plaster shell that he could take off and put back on himself.

Q. As to the dermatitis did that cause any pigmentation or discoloration of the skin?

A. Yes sir.

Q. And he has that? A. Yes sir.

Q. Is that permanent, this discoloration?

A. I would think it would be.

Q. How long did you treat him and see him continuously? [9]

A. To the present time.

Q. When did you last see him?

A. January 10, 1956.

Q. Did you have any x-ray taken on that day?

A. Yes sir.

Q. Could you step down and show us the x-rays and state what they are?

A. These are 3f and 3g. These films show a healing of the fracture.

Q. Which is which?

A. This is 3g and this is 3f, (indicating)

Q. Concerning either of the fractures, what do they show?



(Testimony of John W. Garner.)

A. They still show the elevation of the posterior tibial margin.

Q. That was on 3f and 3g which you just had there?  
A. Yes sir.

Q. Do you see any traumatic arthritis in those x-rays?  
A. No sir.

Q. Is it reasonable and probable that this man will develop traumatic arthritis?

A. I would expect him to.

Q. After about what length of time, with this type of injury, would you expect it to start showing?

A. That is extremely variable but I would expect some to be visible perhaps in three years.

Q. When there was this dislocation and fracture was there soft tissue damage to this man? [10]

A. Yes.

Q. When there is soft tissue damage does scar tissue occur?  
A. Yes.

Q. You cannot discern that by x-ray?

A. No.

Q. Does this man have a limitation of motion of the ankle?  
A. Yes, some.

Q. Is it reasonable and probable that this man will continue to permanently suffer some discomfort as a result of the injury he sustained in February 1955?  
A. Yes sir.

Q. It is reasonable and probable that this man—

Mr. Brooke: That is leading, many of these questions have been.

(Testimony of John W. Garner.)

The Court: Yes it is leading, however you didn't finish the question. Go ahead, but don't lead the witness.

Q. Do you have an opinion, Doctor, as to whether or not it is reasonable and probable that this man's ability to work, to perform manual labor is permanently impaired?

A. I do have an opinion and it is reasonable and probable that his ability to work will be permanently impaired.

Q. This limitation of motion he has, is that permanent?      A. It is permanent.

Q. As I understand it, you treated this man until June when you stated that he could start back to work? [11]      A. Yes.

Q. And then you saw him again in January of this year?      A. Yes sir.

Q. Doctor, what is the reasonable charge for your services rendered?

The Court: I wonder if you gentlemen cannot get together on the amount of these bills, the Doctor, Hospital bills and so forth?

Mr. Brooke: If counsel will present the bills to me I think we can agree on the reasonableness of them.

Th Court: I think you can stipulate the amount in the record and save some time.

Mr. Pozzi: It is stipulated between counsel that the bills presented are as follows: Hospital \$172.00; Doctor John Garner \$200.00; Miles Funeral Home,

(Testimony of John W. Garner.)

ambulance \$6.50; x-rays \$15.00; Doctor Stephenson consultation on dermatitis \$8.00.

While counsel looks those over I will ask another question if I may.

The Court: Yes, go ahead.

Q. Did Mr. Titus have to go back to the hospital after his original discharge?

A. Yes, his casts were changed at the hospital.

Mr. Brooke: The amounts of the bills are so stipulated. [12]

Mr. Pozzi: The total is \$402.50. You may inquire.

#### Cross Examination

Q. (By Mr. Brooke): Did you discharge the man back to work in June Doctor? A. Yes.

Q. Was that to regular longshore work?

A. Yes.

Q. This limitation of motion that you found, did you manipulate both of his feet to see the difference? A. Yes.

Q. Did you do that in January?

A. Did it several times, in May—May 23, 1955, again June 6, 1955 and January 10, 1956.

Q. Isn't it true that the limitation of motion you found was at the end of the arcs?

A. That is correct.

Q. And it is not much limitation?

A. That is correct.

Mr. Pozzi: We object to the use of the word much,—we object to the form of that question.

(Testimony of John W. Garner.)

The Court: He may answer,—perhaps he has.

A. It is not a great limitation.

Q. Now, Doctor, you talked about some arthritis that may develop?      A. Yes sir. [13]

Q. Could that be caused, or be the general arthritis that comes on later in life, that comes with age or how do you associate it with the injury?

A. What was the last part of the question.

Q. How do you associate it with the injury?

A. By past experience with similar injuries to other individuals,—injuries to weight bearing joints.

Q. Would subsequent injuries precipitate arthritis?

A. I am not sure that I correctly understand that question.

Q. Well Doctor, with just normal activity in a man, as he reaches later age he is going to develop certain type of arthritis, is he not?

A. That is correct.

Q. And that may be in the ankle joint or other parts of the body?      A. That is correct.

Q. As I understand it, Doctor, there has been a good alignment of the fractures, they have been reduced and come into good alignment?

A. That's right.

Mr. Brooke: That is all.

#### Redirect Examination

Q. (By Mr. Pozzi): I don't want to get off on this Doctor. My question was concerning traumatic

(Testimony of John W. Garner.)

arthritis, will you explain what you mean by traumatic arthritis? [14]

A. Where a weight bearing joint has been disrupted and the soft tissue and the ligamentous structure has been torn and damaged and there is a healing and scar tissue, and where the cartilage lining has been damaged and there is a blood supply damage,—in that type of injury we expect earlier degeneration of the joint cartilage and we might expect in the individual what is called traumatic arthritis. From clinical and X-ray findings it closely resembles arthritis that occurs with aging process.

Q. What is your charge for coming up from Coos Bay and being out of your office a full day?

Mr. Brooke: I object to that it is not alleged as an item of damage.

The Court: That's right.

Mr. Pozzi: That's all.

Mr. Brooke: That's all.

The Court: You may make your opening statement at this time.

(Opening Statement by Mr. Pozzi.)

The Court: We will recess at this time until two o'clock this afternoon.



January 16, 1957—2 o'clock P.M.

NICK CHAVIOS

Called as a witness by the Libelant, after being first duly sworn testifies as follows:

Direct Examination [15]

Q. (By Mr. Pozzi): State your name please?

A. Nick Chavios.

Q. Where do you live?

A. Portland, Oregon.

Q. And what is your occupation?

A. I am a law clerk.

Q. By whom are you employed?

A. Peterson and Pozzi, attorneys.

Q. How long have you been so employed?

A. About five and a half years.

Q. In that capacity as a law clerk did you have occasion to be sent by me to Coos Bay to investigate an accident where the Libelant was hurt?

A. Yes, sir.

Q. Was that about February 5 or 6, 1955?

A. On the 6th of February I went to Coos Bay.

Q. Did you take any still pictures while you were there?      A. Yes, I did.

Q. Are these the still pictures, those marked for identification in the number seven series?

A. Yes, those are some of the pictures I took?

Q. Submitting to you 7c and 7d Mr. Chavios, what do those pictures show?

A. These are close up views of the end of a six strand wire that the mate of the vessel and the boat-

(Testimony of Nick Chavios.)

swain of the vessel stated were the preventer wire that broke. [16]

Mr. Brooke: Your Honor, this is hearsay and we object to it and ask that it be stricken from the record.

The Court: You may just testify to what the pictures show.

A. These are the pictures of a wire shown to me by the crew of the vessel, which I took on board the SS Santorini, on the 7th day of February, 1955?

Q. Mr. Chavios did you talk to the mate of the vessel before you took those two pictures?

A. I did.

Q. Did he direct you to anyone else on the vessel? A. He did.

Q. To whom did you then talk to that was a member of the crew of the vessel?

A. The Boatswain.

Q. Did the Boatswain, in your presence, give any orders to the crew members?

A. Yes, he did.

Q. What was the order that he gave?

Mr. Brooke: Object to your Honor, again it is hearsay.

The Court: I don't know what position this man had with this Company.

Mr. Pozzi: He is no position with the Company, your Honor, the boatswain is a member of the crew, [17] he is not an officer of the ship, he is sort of foreman of the seamen. I will rephrase the question if I may.

(Testimony of Nick Chavios.)

The Court: Yes, you go right ahead.

Q. I will ask another question. What did you say to the mate when you saw him before he directed you to the boatswain of the ship?

A. The mate was ordered by the Master of the vessel to show me the,—to get the wire to me, and I asked the mate where it was.

Q. Then you talked to the master?

A. The master was the first officer that I talked to about the wire.

Q. What did you say to the Master and what did he say to you?

A. I asked the Master if we could inspect the wire that had broken on the date of the accident and the Master said "yes" that we could and directed the Mate to show it to me.

Mr. Brooke: Just a moment, your Honor, this is purely hearsay and we ask that it be stricken.

The Court: This seems to be the Master of the ship.

Mr. Brooke: If it is an admission against interest then perhaps there is some logic——

The Court: I don't know as it is an admission against interest, it is a statement made by the Master. I will permit this testimony subject to your [18] objection. This being a court trial I will permit this to go in, as I say, subject to your objection and I will consider it at the time of final decision.

Q. You have stated that the Master directed

(Testimony of Nick Chavios.)

the mate to get the wire for you, then what did he do,—what did the Mate do?

A. The Mate, in my presence, called to the Boatswain, who was working, at that time, at the forward end of the vessel with a crew of men, coiling some wire or some rope up there, and directed the Boatswain with the seamen that were with him, there were two or three seamen with him,—to take me to where the wire was stored in the fantail of the ship and to show it to me. The Mate came along with us and the Boatswain directed the seamen to go into the house there, apparently the wire was there. They brought this long strand of wire out and we looked at it. I then turned to the Mate and asked him if I could have a piece of the wire and he said “yes.” I took some photographs first,—I took these two photographs before cutting any of the wire and then we cut one of the strands, I believe,—one or two of the strands off of the end that they showed us had broken and then also a strand off the other end of this piece of wire which had not broken.

Q. Who did the actual cutting of the wire?

A. Members of the crew of the vessel.

Mr. Brooke: Your Honor, I understand that I have an objection to all of this type of testimony.

The Court: Yes, that’s right. If after I consider these objections I feel that they are well taken I will not consider the evidence.

Q. Besides the still photographs did you also take some moving pictures? A. I did.

(Testimony of Nick Chavios.)

Mr. Pozzi: Your Honor, I have here a box the film was in, we have already set it up here. I would like to have the box marked and after we get through we can put the film in the box. This will be marked as 8e. I would like to ask another question.

The Court: Go ahead.

Q. Counsel for the respondent has here some wire in a box, have you looked at it?

A. Yes, I have.

Q. Does that appear to be the same wire you have, or the same wire that the strands were cut from?

A. It appears to be the same wire, yes, sir, some of it does.

Q. And you can see the place actually where it was cut?      A. Yes.

Mr. Pozzi: May this be marked as exhibit 8.

The Court: Yes, it may.

Mr. Pozzi: Now, your Honor, to facilitate the testimony, I will ask this man a few more questions and then I would like to show this film, have a sort of "dry run" for counsel and myself and to the Court. This is to facilitate [20] the testimony of the other witnesses.

Q. What kind of camera did you use to take the moving pictures with?

A. It is an eight millimeter Keystone camera, I think it is a model K8. It is one of the older models of cameras put out by the Keystone people.



(Testimony of Nick Chavios.)

Q. And at what speed did you take the pictures?

A. Sixteen frames per second is the speed which I used on it.

Q. Is that what is known as the normal speed?

A. Normal speed for silent film.

Q. And was this silent film?

A. This is silent film.

Q. And handing you Libelant's Exhibit 8, is that the film?      A. Yes, this is the film.

Q. Do you recall what time of day you took it?

A. As I recall the moving picture was made somewhere in the vicinity of one or two P.M., after the longshoremen had turned to again, after lunch.

Q. And on what date?

A. On the 7th day of February, 1955.

Q. I notice on the box it says they were taken on the 6th. Are you sure whether it was the 6th or the 7th?

A. It was the 7th, this was an error because I had, when I put this on, I had inspected my expense account and it showed the 7th. That was the day,—excuse me,—it showed the 6th. That was the day I went down and the picture was taken on the 7th, the day after I got there. [21]

Mr. Pozzi: With the Court's permission we would like to have this picture run at this time.

Mr. Brooke: As I understand it counsel, this is to be used purely for illustrative purposes. It couldn't possibly portray the scene of the accident at the time.

(Testimony of Nick Chavios.)

Mr. Pozzi: I think the evidence will go to show, after we get through with this, that the actual—this film will show the actual operation as it was at the time of the accident; that the booms were in the same position as they were at the time of the accident. The only difference is that after the second accident they put two preventer wires on this big ship boom instead of the one that was on at the time of the accident.

Mr. Brooke: We will admit the use of the movie for illustrative purposes only, until such time as counsel shows—

The Court: Just a moment, I think that is the only purpose for which it could be admitted.

(Movie film shown.)

### GLEN TITUS

Called as a witness for the Libelant, after being first duly sworn, testifies as follows:

#### Direct Examination [22]

Q. (By Mr. Pozzi): Will you state your name please?      A. Glen Titus.

Q. Where do you live?

A. Coos Bay, Oregon.

Q. And what is your address there?

A. 1080 Lockhart Street.

Q. How many years have you lived in the Coos Bay area?

A. I have lived in the Coos Bay Area 29 years and better.

(Testimony of Glen Titus.)

Q. You were born in Oregon were you?

A. In Oregon.

Q. How far did you go in school?

A. Through high school.

Q. How many years have you been a longshoreman?  
A. Since 1947.

Q. How old are you now? A. Forty-five.

Q. Is it forty-five or forty-six?

A. I will be forty-six next month.

Q. How tall are you Mr. Titus?

A. Approximately five seven and three-quarter inches.

Q. How much do you weigh?

A. 205 pounds.

Q. Has that been your approximate weight the last few years?  
A. Yes.

Q. Are you a married man? A. Yes. [23]

Q. How many children do you have?

A. Three.

Q. How many at home? A. Two.

Q. You have one grown about 24 and the other two are at home, is that right?  
A. Yes, sir.

Q. How old is your oldest?

A. I have a daughter married that is twenty-six years of age, I have a boy that is thirteen, and the youngest boy, he will be eight the last day of this month.

Q. Mr. Titus, before this accident had you ever injured your right ankle, your foot or leg?

A. No, sir.

(Testimony of Glen Titus.)

Q. In longshore work, when you started longshoring, what kind of work did you do?

A. What we know as hold work.

Q. Will you explain what you mean by hold work?

A. We work down in the hold of the vessel stowing lumber. In our particular port we have nothing but lumber. We stow lumber in such a manner that we fill up all the available space of that ship with cargo.

Q. You mentioned that the only kind of cargo you have there is lumber, is that right?

A. Very small amount of pulp.

Q. You don't have what is as general cargo?

A. No, sir.

Q. Canned goods and things like that?

A. No, sir.

Q. Now, on the day of the accident, which was what date?      A. February 5th.

Q. What day of the week was that?

A. Saturday.

Q. What was your job that day?

A. I was assigned to gang sixteen that day, as winch driver.

Q. Had you been driving steady as a winch driver before that day?      A. No.

Q. What had you done before that?

A. Hold work.

Q. Had you learned how to drive the winch while working in the hold?      A. Yes.

Q. What does a winch driver do?

(Testimony of Glen Titus.)

A. He picks the cargo up,—he operates the winches that picks the cargo up from the dock and sets it in the hold of the ship.

Q. He manipulates levers then, is that right?

A. Yes, that's right.

Q. When you turned-to that morning with gang sixteen on the SS Santorini what hatch were you assigned to?

A. Number one hatch.

Q. What time did you go to lunch or dinner that day? [25]

A. Eleven o'clock.

Q. What is your normal eating time?

A. Twelve o'clock.

Q. What was the reason for going to lunch at eleven that day?

A. We had been ordered to go to lunch at eleven so that we may work in the number two hatch during the regular lunch hour from twelve to one.

Q. Now, was there a gang working in number two hatch before noon?

A. Yes.

Q. What gang number was that?

A. Gang number one.

Q. Do you know whether or not Lief Thrush was a member of that gang?

A. He is a member of that gang, and was at that time.

Q. Do you know what his job was?

A. Winch driver.

Q. Were these winches what is known as singles or doubles?

A. They are what was known as double or slow speed.



(Testimony of Glen Titus.)

Q. I think you misunderstood me. What I meant is was it a two or a three legged job?

A. It was a single job.

Q. It was a two legged then?

A. It is where one man operates both winches.

Q. How many winch drivers then were in your gang? A. Two. [26]

Q. You were one of them and who was the other?

A. Wilton Gunn.

Q. On this particular ship, that day, if Mr. Gunn was on the winches, what would your job be,—on this day of the accident? A. Hatch tender.

Q. Tell the Judge whether or not you alternate, an hour on and an hour off the winches, in other words, did you change jobs with Mr. Gunn?

A. We do.

Q. At twelve o'clock when you shifted into the number two hatch to relieve the number one gang what was your turn to be, winch driver or hatch tender? A. Hatch tender.

Q. All right, then you started tending hatch?

A. At twelve o'clock.

Q. What time did you say,—strike that please,—I don't think I asked that. What time did this accident happen, approximately?

A. 12:15, approximately.

Q. Will you tell the Judge what you had done up to that time, how much cargo you had moved, or had been moved in that fifteen minutes?

A. There was one load setting on the deck ready to set down into the hold when the men needed it.

(Testimony of Glen Titus.)

Mr. Gunn picked that load up and set it down in the hold. We went out and got [27] the top half of a load off the dock, had taken that into the hold and went back to get the bottom half of that load to set on deck until time to set it down into the hold. On that second load from the dock is when the preventer gave way.

Q. How was the ship tied to the dock, port or starboard?      A. Port side to the dock.

Q. Port side to?      A. Yes.

Q. All right, now, at the time of the accident were you at the port side of the vessel or starboard side of the vessel?      A. Port side.

Q. We will hand you what has been marked 7a, 7f and 7g, they have been identified as pictures of the Santorini. Will you look them over and state if you have seen them before?      A. Yes, sir.

Q. Those are pictures of the ship?

A. They are.

Q. I notice in those pictures that the ship is riding high in the water. Was the tide in or out when those pictures were taken?

A. Evidently the tide was in.

Q. Now, at the time the accident happened was the tide in or out?

A. It was riding high so evidently it would have to be in. [28]

Q. Now, will you state whether or not it was necessary for you to give signals to the winch driver in picking the loads up off the dock and bringing them up over the side of the ship?      A. Yes.

(Testimony of Glen Titus.)

Q. In relation to the hatch where were you standing in giving the signals at the time the accident happened?

A. I was standing on the port side about the middle of the deck load and about even with the hold of the ship,—the hatch.

Q. By “even with the hatch” what do you mean, even with the edge, the middle or where?

A. The forward end of the hatch.

Q. Would that put you in a position,—state whether or not that put you in the clear of the gear, the moving parts?      A. Yes.

Q. Would that put you in a position where the winch driver could see?      A. That’s right.

Q. And also where you could see on the dock?

A. That’s right.

Q. Had you been talking with anyone immediately before the accident?      A. I had.

Q. Who was it that you had talked to?

A. The walking boss. [29]

Q. What was his name?

A. William Hassan.

Q. Do you know where he was at the time the accident happened?

A. He had just left me and was at the after end of the hatch, approximately in the vicinity of the after end of the hatch.

Q. You mean by “approximately” that he was in about the same position with relation to the after end as you were to the fore end?

A. That’s right.

(Testimony of Glen Titus.)

Q. And was he on the same side of the vessel that you were,—on the port side? A. He was.

Mr. Pozzi: May I approach the witness, your Honor, with these pictures?

The Court: Yes, you may.

Q. Handing you what has been marked and admitted as Exhibit 7a, will you hold that up to the Court and show the Judge where you were standing immediately before the accident?

A. Just past the end of the leads where they are carried across the deck load, I was at this end.

Q. By "this end" you are indicating the forward end of the hatch? A. The forward end, yes.

Q. Handing you Exhibit 7b could you point to that and show the Judge where you were standing?

A. My position there was right where my finger is pointing, [30] which would be just after this shroud or guy line, we call it on board the vessel. I was standing just after that, about the middle of the deck, where I could see the winch driver, whose position was here (indicating) and also see the dock at the same time.

Q. There are some hatch covers piled up on top of the deck load between the number one and two hatches. Will you point those out to the Judge?

A. Here (indicating).

Q. Why are they put in there, in between the hatches?

A. It was the only safe place we had to put them.

Q. Now, you might explain that to his Honor,—

(Testimony of Glen Titus.)

you don't put them where you are moving the cargo over, and why is that?

A. Your Honor, the hatch covers are placed in this position here. Being here (indicating) the load might sweep them into the hatch on top of the heads of the men working there. On this side of the vessel we place what we call the beams, big iron beams that go across the hatch that the hatch covers lie on. They are placed on their side, taking up that space, so half of the hatch covers are placed between number one and number two on **this side**, and half of them are placed between number one and number two on this side where they will be in a safe position.

Q. Now, in your own words would you tell His Honor what happened to you,—you started to pick up this load where you were hurt, now, what did you do,—how did you tell the [31] winch driver to pick it up?

A. We use signals, and as we stand and he watches me I pick him up on the yard—what is called the yard boom until he took up the slack on that and then on the other one and then motioned for him when he had tightened into it and everything was secure around the load,—the slings,—I signaled him to pick it up and he came up hard on his yard and got the load approximately even with the deck load and started to pull it in toward the midship with what we call the midship fall and just as he tightened into it the off-shore preventer gave way.



(Testimony of Glen Titus.)

Q. How far inport, that is, toward the ship, had he moved that load with the midship before the midship preventer gave way? Where was the load with relation to the edge of the ship on the port side?

A. It was just about even with the deck load and still coming up because it had to go up over the stanchion, it was right close to the stanchion.

Q. All right now, is that the normal operation, the usual and customary manner of hoisting a load?

A. It is.

Q. This preventer that gave way, what is the preventer made of?           A. Wire rope.

Q. Beside the preventer is there also a guyline over there on midship?           A. There is. [32]

Q. When the preventer gave way did the guy wire also break?           A. It did.

Q. What is the guy line made of?

A. Usually manila rope. Some good grade of rope.

Q. In this particular case you say the preventer gave way, now, what did you see and what did you do at that time?

A. When the preventer gave way it gave a loud report and I looked up and saw the off-shore boom swing in my direction, it had the block from the rope guy and also the preventer above the break whipping around in the air and I proceeded to get out of the way.

Q. Which way did you try to run to get out of the way?

(Testimony of Glen Titus.)

A. There was only one way I could go, that was toward the forward end of the ship.

Q. Just tell the Court what happened,—you turned and started to run and then what happened?

A. I grabbed the guy line or shroud, as we call it, and jumped over that.

Q. Now let me hand you 7b and you show the Judge what shroud or stay you are talking about?

A. This stay (indicating). I was on this side stay, I took told of that and jumped over that. I would have had to bend down to go on this side (indicating) and there was approximately about three foot space between that and the deck load, so I just grabbed that and jumped over the top of it and jumped into these hatch covers. [33]

Q. Did you land on the hatch covers?

A. No, I landed on the deck and slid under the hatch covers.

Q. In other words, you slipped and fell in trying to get out of the way, is that right?

A. Yes, that's right.

Q. Now, these pictures that you have looked at, 7b and so on, do they show the angle of the booms as they were at the time you were hurt, state whether or not they show that? A. They do.

Q. I notice that the yardarm, what you call the yardarm,—the port boom is way out toward the dock and the other boom, the midship is top high for the middle of the hatch, now, will you explain to the judge why they are rigged that way?

A. They are rigged that way so that you are able

(Testimony of Glen Titus.)

to reach out on the dock, pick up the loads of cargo and swing them in to the hold.

Q. What happened to you when you fell,—just tell the Judge?

A. Knowing that the preventer gave way, my first thought was to get up and give signals to the winch driver to set the load back down. He was holding the load, for fear of injuring someone else.

Q. Someone else where?

A. Out on the dock. I was unable to get up and by that time Mr. Hassan and Mr. Johnson, our hatch foreman came running [34] up and they set down the load and started looking after me.

Q. How were you removed from the vessel?

A. By basket.

Q. What gear did they take you off with?

A. Number one.

Q. Where were you taken?

A. McCauley hospital.

Q. Were you in pain?           A. I was.

Q. Where did you hurt?       A. In the ankle.

Q. How did you feel, just describe it to the Judge?

A. Well, my foot was turned quarter way around, instead of sticking out from the forward part of my leg it was sticking out the side,—out from the side and it hurt, it ached and I was taken to the hospital.

Q. What hospital?

A. The McCauley hospital.

Q. And what Doctor saw you there?

(Testimony of Glen Titus.)

A. Doctor Garner.

Q. X-rays were taken I presume?

A. Yes, they were.

Q. State whether or not they set your leg or foot?      A. I beg your pardon.

Q. Did they set your leg and did they give you any anesthetic? [35]      A. Oh, yes.

Q. They knocked you out at the hospital?

A. Yes, when I woke up I had a cast on.

Q. Now, did you have any trouble,—you were in the hospital until the 11th, is that right?

A. Yes.

Q. When you were discharged how did you get along?      A. Apparently very well for a few days.

Q. Then what happened?

A. I began to have complications set in under the cast.

Q. What did you notice and what did you feel?

A. It burned and itched.

Q. Was the cast taken off, that cast you had on when you were discharged from the hospital, was that taken off?      A. Yes.

Q. Now, did you ever have any dermatitis on that foot or leg before this accident?      A. Never.

Q. Were you treated for dermatitis?

A. I was.

Q. How long were you off work. When did you first get back to work?      A. On June 27th.

Q. Did you go right back to steady work or did you miss some time after June 27?

A. I went to work June 27th driving winch and

(Testimony of Glen Titus.)

I drove until [36] the 30th. After July 1st I had to turn down jobs seven different days due to the fact that I didn't feel that I could work in the hold.

Q. What did you earn in the year 1953?

A. \$5475.00.

Q. What did you earn in the year 1954?

A. May I look at the record?

Q. Yes, you may. A. \$4798.72.

Q. In 1953,—is there an explanation why your earnings dropped from 1953 to 1954?

A. Yes, sir.

Q. What is that reason or explanation?

A. We had a sawmill and Lumbermen's strike in the Coos Bay area.

Q. How many months work did you lose on that account? A. About two months.

Q. In 1955 after you were hurt, from February 5 to June 27 was there plenty of work available if you had been able to work?

A. From the reports that I gathered from some of the other boys, there was quite a bit of shipping.

Q. Was it normal? A. It was normal, yes.

Q. Was there any strike on? A. No. [37]

Q. Mr. Titus, when the Doctor released you for work, what kind of work did he release you for?

Mr. Brooke: We object to that, the Doctor has already testified that he released him for regular longshore work.

Q. Mr. Titus, did you discuss, with the Doctor, your returning to work? A. I did.

Q. In June, returning in June? A. Yes.



(Testimony of Glen Titus.)

Q. State what you told him?

A. I met him at his house and I asked him when I could go back to work and he said any time, and he asked me what I did and I told him I drove winch, and he asked me if I did any heavy lifting——

Mr. Brooke: I will object to what the Doctor told him, he should not be permitted to testify to what the Doctor said to him?

Mr. Possi: That's correct.

Q. What did you tell the Doctor about the kind of work you did?

A. I told him I drove winch?

Q. Did you explain what it involved?

A. He asked——

Q. Not what he said to you,——

A. ——I told him it involved working levers.

Q. Did he release you to do that work?

A. To go ahead and try it.

Q. Now, Mr. Titus, are you able to work in the hold of a ship now?      A. Well,——

Q. ——to do the cargo handling, that end of the work?      A. No.

Q. Are you able to drive winch?      A. Yes.

Q. Mr. Titus will you take your shoe and stocking off, the right foot Mr. Titus? Now, pull your pants leg up. Now put your feet together. Mr. Titus, your right foot appears to be larger in this area and more filled out than it does on your left foot, now, how was your right foot before the accident as compared to your left?

(Testimony of Glen Titus.)

A. It was normal,—it was the same.

Q. Did they look the same? A. Yes, sir.

Q. Now, Mr. Titus, I want you to hold your feet together about like this (indicating.) Now, bend them up together like this (indicating) bend them as best you can. Now, do you have your right foot up as far as you can bend it? A. Yes, sir.

Q. Now, bend them down. Now, Mr. Titus, put your feet apart. Now, rotate them together,—in. Try to do it together. Are you able to do it together? A. No. [39]

Q. Now look at me,—rotate them the other way,—can you do that? A. No.

Q. Now hold your knees together and rotate your feet, not your knees. A. Outward?

Q. Yes. You can't get them to go together, is that right? A. That's right.

Q. Is your foot swollen now, as you sit there?

A. Yes.

Q. Have you been off your feet today or off them? A. Off most of the time.

Q. Now, Mr. Titus, when you are on your foot all day working does that foot get any bigger than it is right now? A. Some days it does, yes.

Q. Are you able to lift on that foot?

A. No, that's why I can't work in the hold.

Q. Are you able to climb ladders up and down in the hold? A. Not very conveniently.

Q. Why not, what is the trouble?

A. Due to the stiffness in the action of that foot.

Q. Do you have any pain in that ankle or foot?

(Testimony of Glen Titus.)

A. Yes, sir.

Q. Just show the Court, put your hand where the pain is?

A. Right across the ankle here. At time it does pain down through here too. [40]

Q. Have you ever spent a day since this accident when that foot is free of pain, when you haven't done any work at all?      A. No.

Q. Now, when you walk like a person does, and go up on your feet like this (indicating) does that hurt you at all?      A. Yes.

Q. Now, this discoloration that is on your leg, just below your knee and on down, all of this (indicating) on both sides, now, Mr. Titus, was that there before the accident?      A. No.

Q. Has it been there since this skin infection?

A. It has.

Q. Is it getting any better?      A. No.

Q. About how many months has it been since it improved at all?

A. Well, it looks just the same as it did after the scabs healed up.

Q. And that was last spring?      A. Yes, sir.

Q. Now, I notice that you have a scar here on the inside of the left side of your foot, what is that?

A. That is from the cast.

Mr. Pozzi: You may inquire.

Cross Examination [41]

Q. (By Mr. Brooke): The first day you went

(Testimony of Glen Titus.)

to work was February 5th,—let me ask this,—had you worked the day before the accident?

A. I had.

Q. At the number one hatch? A. No.

Q. Where had you worked the day before the accident? A. On another ship.

Q. That's what I meant. The first day you worked on the Santorini was on the 5th?

A. Yes.

Q. And you worked on the number one hatch?

A. Up to eleven o'clock.

Q. Up to that time had the gang at number two been loading steadily into the hold?

A. So far as I know they had.

Q. Just prior to the accident you had been talking to the walking boss? A. That's right.

Q. And had he left your company and started toward the after part of the ship? A. He had.

Q. Where was he when the accident happened?

A. At the after end of the hatch.

Q. Walking toward the stern?

A. No, he was standing there looking toward me.

Q. What kind of lumber were you loading at the number two hatch when the accident happened?

A. At number two?

Q. Yes?

A. I believe it was two by sixes,—it was two inch lumber.

Q. Two inch lumber, about twenty feet long?

A. In that neighborhood.

Q. I think you said it was about half a load?

(Testimony of Glen Titus.)

A. Half a carrier load.

Q. Can you estimate how many pieces of timber were actually in the load?      A. No, I couldn't.

Q. Which side of the shroud were the hatch covers,—were they forward or after the shroud?

A. They were forward of the number two shroud.

Q. The one you jumped over?      A. Yes.

Q. You didn't land on those when you fell?

A. No, I landed on the deck and slipped.

Q. You have been in Coos Bay working as a longshoreman since 1947?      A. That's right.

Q. Prior to that time you were a truck driver?

A. I had held many jobs.

Q. They have strikes from time to time there in the Coos Bay [43] area don't they, Mr. Titus?

A. Occasionally.

Q. When they have those strikes they have work stoppages, generally that's the case isn't it?

Mr. Possi: I think I better object to that,—what kind of strikes and stoppages.

Q. Work stoppages of longshoremen?

Mr. Possi: I object on the ground that it is irrelevant, it doesn't tend to prove or disprove any issue in this case, about any other work stoppage.

Q. When they have lumber strikes in the Coos Bay area does that generally involve work stoppage for longshoremen?

A. Yes, if there isn't any lumber manufactured you can't load it on ships.

Q. Now, do you know how the rope guy on the



(Testimony of Glen Titus.)

starboard boom at number two hatch was rigged prior to the accident?

A. How the rope guy was rigged?

Q. Yes.

A. In the usual manner.

Q. Did you have two blocks through which the rope guy was passed?

A. I believe it was a single block with a double pulley in it, a double block you might call it, it wasn't two blocks at the one end and I believe it was a double block at the other end.

Q. How many times did the rope guy pass back and forth between [44] where it was secured to the upper part of the pendant and the pendant attached to the deck?      A. Passed through three times.

Q. Then it is tied to the pendant?

A. On the fourth turn.

Q. Explain to the Court what a pendant is?

A. In this instance a pendant would be the length of wire that ran from the block to the top of the boom.

Q. And there is also a pendant that leads from the rail to the lower block?

A. We usually speak of that as the strap.

Q. That was the setup on the particular boom at the time of your accident?

A. To my recollection it was.

Q. You were employed by an independent stevedoring Company were you not?

A. That's right.

(Testimony of Glen Titus.)

Q. You were not an employee of the steamship Company?

A. I was dispatched from the Union hiring hall.

Q. Was your gang as well as the gang at number two hatch employed by an Independent Stevedoring Company?

Mr. Possi: Counsel I think we agreed to that. Your Honor, it is a fact that in the Pretrial Order, that is agreed to.

Mr. Brooke: That the longshoremen are employed by the Stevedoring Company and not by the ship. [45]

The Court: It is so understood.

Mr. Brooke: That's all.

#### Redirect Examination

Q. (By Mr. Pozzi): I would like to ask this witness, as the picture was being shown or run, to say where the load was at the time the preventer wire broke. Are you able to do that by looking at the pictures? A. I think perhaps I can.

(Moving picture film ran.)

A. About right there.

Q. Is that about how much he had on the midship at the time it broke?

A. Right there, this deck load was not quite at the top of the stanchion.

Q. How much drift did he have left on that yardarm?

A. You mean from this point here to where it tightlined?

(Testimony of Glen Titus.)

Q. No, just on the yard arm itself, straight up to the block?

A. Oh, I would say ten or fifteen feet.

Q. How much on the midship?

A. Oh, it traveled from here a long ways up there.

Mr. Pozzi: That's all from this witness.

Mr. Brooke: That's all.

The Court: We will take a fifteen minute recess at this time.

January 16, 1956, 3:15 p.m.

[46]

### WILLIAM HASAN

called as a witness by the Libelant, after being first duly sworn testifies as follows:

#### Direct Examination

Q. (By Mr. Pozzi): Will you state your full name please?      A. William Hasan.

Q. Where do you live?

A. North Bend, Oregon.

Q. What is your occupation?

A. Longshoreman, at the present time I am walking boss.

Q. What is a walking boss,—first let me ask for what Company are you a walking boss for?

A. Independent Stevedore Company.

Q. What is a walking boss?

A. More or less loading supervisor I guess you would call it.

(Testimony of William Hasan.)

Q. Are you boss of gangs of men that are on the ship? A. Yes sir.

Q. Now, Mr. Hasan, were you working on the SS Santorini on February 5, 1955 when the Libelant here was hurt? A. Yes sir.

Q. What was your job that day?

A. Walking boss.

Q. Did you walk that ship the day before?

A. No.

Q. When you came aboard that morning will you state whether [47] or not the gang at number one hatch and also at number two hatch, did some rigging on the ship?

A. On that particular day there were two walking bosses, one on the fore end and one on the after end and I happened to be on the after end so I couldn't tell you, it would be hearsay because I was on the after end.

Q. And you were not present on the forward end in the morning when you turned to? A. No.

Q. Were you present, and walking the vessel between twelve and one o'clock when a gang was in number two hatch relieving the gang that was regularly assigned? A. Yes.

Q. In other words you were working between twelve and one when the other walking boss was at lunch, is that right? A. Yes.

Q. Did you see the accident happen?

A. Yes.

Q. I hand you what has been marked as 7b, will you show the Judge from the picture where you

(Testimony of William Hasan.)

were standing,—I don't know whether that shows it or not.

A. It doesn't show in this picture here, but I was standing here (indicating) when the hook went out, and then I walked back here where you can't see on that. I was standing here (indicating) before the break. [48]

Q. Then at the time of the break where were you standing?

A. I walked toward number three hatch. I had been talking to Mr. Titus and he said something to me and I turned around and was facing Mr. Titus and looking at the dock at the same time, facing number two hatch,—the winch driver and the hatch.

Q. Now, on that picture that you have in your hand, as well as 7b, will you state whether or not that shows the angle of the booms and the position of the booms as they were at the time of the accident?

A. Yes,—you have two preventers on there now and that is not the way it was at the time.

Q. After the accident,—you mention that now there are two preventers on there,—after the accident on the 5th what was done? What did the sailors do, did they put on two preventers instead of one?

A. Yes.

Mr. Brooke: Now, your Honor, I move to strike that—

The Court: It may be stricken.

Q. After the accident happened—



(Testimony of William Hasan.)

Mr. Pozzi: Your Honor, I don't want to go contrary to the Court's ruling.

The Court: I think it is a well established rule that testimony as to any correction made after an [49] accident happened is not admissible.

Mr. Pozzi: If it please the Court, I don't wish to dispute the Court but in admiralty matters as well as Federal Employer Liability Act cases under the Railroad Act it is proper to show corrections made after the accident. I do not have available at my finger tips the citation of authorities.

The Court: It will be a surprise to me if that is the law but under your statement I will permit this testimony and——

Mr. Brooke: The point is your Honor, there has never been any contention that there should be two preventer wires, the universal custom is to have one preventer wire and one rope guy.

The Court: I will let you go ahead and put in this testimony, this being a court trial I will be somewhat liberal and I will look into this later.

Q. After the gear carried away will you state whether there were two preventers put on that ship, if you know?

A. I wasn't there when they put it on, if that is what you mean.

Q. Did you see it there after it was rigged that way? A. Yes.

Q. Now, Mr. Hasan, will you tell the Judge in your own words what you saw at the time of the accident?

(Testimony of William Hasan.)

A. Mr. Titus started to give signals and I was watching him [50] and the load and he gave the signal to pick up the yard boom and I would say that about ten—between ten and fifteen feet, and he gave the signal on what you call the midship boom to pull the load in and he just took the slack out, he wasn't quite to the stanchions, eight or nine foot stanchions, whatever they were, and about that time I heard the pop and I looked over to the starboard side and I saw the preventer swinging over and I saw the rope guy and I hollered at the winch driver to look out and I stepped back four or five feet and I saw Mr. Titus turn around and go toward number one hatch and then after the wire swung over I didn't see Mr. Titus and the load was still out there swinging so I gave Mr. Gunn, the winch driver, signals to lower the load, I saw the dock was clear so I had to lower the load so that no one would be hurt by the load swinging.

Q. You say you saw the load swinging, where was the load in relationship to the gunnel of the ship when you saw it out there swinging?

A. I would say five or six feet, something like that.

Q. Which way, inboard or outboard from the gunnel of the ship?

A. Outboard, after it broke, the boom swung in and the load naturally went out toward the dock away from the ship.

Q. How long have you been walking boss for the Independent Stevedore Company?

(Testimony of William Hasan.)

A. About three and a half years. [51]

Q. How long have you been working steady as a walking boss?

A. Two years.

Q. Do you have an opinion as to whether that load was being hoisted in the usual and customary manner?

A. Yes, it was.

Q. Now, after the accident happened to Mr. Titus, did you talk to the chief mate on the ship?

A. Yes, I did. I was on my way to phone for an ambulance and I hollered to the dock men to get a basket and I started out toward number three hatch. I don't recall just where I met the mate whether it was by the gangway or where it was, but I told him that the preventer broke and a man was hurt, and he came up, of course, too and I went out on the dock to call an ambulance, after I saw that Titus was hurt.

Q. Will you state whether or not you went back aboard the ship after that?

A. Yes, I went back.

Q. After you went back was the preventer wire, —the pieces still hooked on the rail of the ship?

A. The end part was still laying on the ship. I don't remember whether the preventer flew off the boom or not, I couldn't say that, I don't recall.

Q. State whether you looked it over?

A. I went over with the mate to see what had happened, to see what was going on.

Q. What did you observe there? [52]

A. Well, I saw the broken part there, the broken

(Testimony of William Hasan.)

guy and broken preventer laying there on the bottom, the end still fast on the bottom.

Q. Would you state whether or not that preventer wire, the part fastened,—well, state where it broke in relationship to the pad eye?

A. About a foot or a foot and a half above the pad eye on the bull rail.

Q. Do you recall what kind of setup they had on the bull rail, cleats and pad eyes at the place where this rigging was hooked up?

A. I noticed that they only had one cleat there and when they made the preventer fast they couldn't go back toward number one hatch because number one hatch had taken them cleats and we had to come back to number two hatch in order to secure the preventer wire, that's the only place they could go.

Q. You say there was only one cleat, how many pad eyes were there?

A. Two forward and two aft of the cleat.

Q. Why couldn't they have secured both of them on the same cleat, both number one and number two?

A. They never do.

Q. What is the reason?

A. Well if number two broke then the boom of number one would go down too, in other words, you would lose both booms. [53]

Q. Then it is a matter of safety?

A. Yes sir.

Q. Considering the angle of the booms and the

(Testimony of William Hasan.)

lift that was being made, should that wire have held?

Mr. Brooke: I object to that, that question calls for a highly speculative answer. The question doesn't contain all of the facts——

The Court: I don't know whether you have laid a foundation for him to give an opinion on that. It didn't hold,—I think I will sustain the objection.

Q. You have been a longshoreman for how many years? A. Ten.

Q. Have you operated winches? A. Yes.

Q. Have you rigged ship's gears? A. Yes.

Q. State whether or not it is necessary for longshoremen working ships to rig gears?

A. Oh, yes.

Q. Do you have an opinion as to what was the cause of the line, this preventer wire breaking?

Mr. Brooke: We object to this question. This man,—this witness has not been established to be a man familiar with wire rope and what will break and what won't under certain stresses. He has not been qualified as a [54] scientific man who could take into consideration the stresses and strains that are placed on wires. The question is improper to put to this man.

The Court: I don't think that sufficient foundation has been laid to permit him to answer this question. I don't think he is shown to be qualified however, I will let him answer and I will pass on the question of his qualification later. He may answer.



(Testimony of William Hasan.)

A. Will you repeat that question.

Q. Yes, do you have an opinion as to the cause of the failure of the wire under those circumstances as they were at the time of the accident?

A. So far as the rigging is concerned—

Mr. Brooke: Can you state whether you have an opinion?

A. Yes.

Q. Yes, do you have an opinion Mr. Hasan?

A. Yes sir.

Q. Now, you can explain that opinion to the Court?

A. So far as the conditions on the ship are concerned, it was rigged right. That's the way we normally rig the gear. If you only have one cleat there is nothing else you can do. If you have two cleats then there is one to the cleat, but there are lots of ships rigged that way. Under normal conditions there must have been a defect somewhere or it wouldn't have broke. The load was an average load, a twenty foot load, a half a [55] carry load, it come in two sections.

Q. Were the other gears on the ship, all the other hatches hoisting the same size loads?

A. More or less during the day, yes.

Mr. Pozzi: Now, if we may have the film again I would like to have this witness point out if the number one rigging the same as shown in the film, that is, the angle of the booms and so on, where they were winched to, and the height of the boom, were they approximately the same as they were at

(Testimony of William Hasan.)

the time of the accident, and to have him point out where the load was as he saw it at the time he heard the gear give way.

A. Yes, about the same, and I was standing about in there (indicating).

Mr. Pozzi: You may inquire.

#### Cross Examination

Q. (By Mr. Brooke): What time did the long-shoremen turn to that morning?

A. Eight o'clock.

Q. You hadn't worked the ship the day before?

A. No. I was either off or on another ship.

Q. And you just came forward during the noon hour,—to the forward part of the ship?

A. Yes.

Q. Now, I think you said that the load was five or six feet out over the port rail of the ship after the preventer [56] wire parted?

A. After it broke it was five or six feet,—I mean it was swinging out.

Q. That would be the natural thing to happen would it, Mr. Hasan?      A. Yes.

Q. In fact, you have no support from your star-board boom so the load would swing out so it would hang underneath the yard arms, is that correct?

A. He already had a little strain,—started to strain on this midship and after it had broken it would have to go back out.

Q. Now when you said that the preventer wire

(Testimony of William Hasan.)

was parted about a foot or a foot and a half from the pad eye, what do you mean by the pad eye?

A. The pad eye that is on the boom rail.

Q. Is that the pad eye to which the preventer wire was attached?

A. It is the one the first preventer went through.

Q. It was about a foot and a half above that?

A. Somewhere in there.

Q. It went through a pad eye to another pad eye, is that what you testified to?

A. Yes, it went through a pad eye on the bulwark and then there is a pad eye down there by that big bit down there, I think it went through there and he doubled it up in there somewhere. I don't recollect just how they had the bottom fastened, but usually they run it through the two pad eyes [57] and put a half-hitch and tie it off.

Q. They didn't run it through two pad eyes in this case?

A. Yes, they had to to make it fast.

Q. Do you remember what they made it fast to?

A. I don't remember where it went after the second pad eye, it went to the first and then on to the second one and they had to go around another pad eye in order to secure it, but I can't tell you truthfully just how.

Q. You don't know exactly what the arrangement was?      A. Not on the bottom, no.

Q. At the first pad eye it went through, there was a distance of about a foot or a foot and a half

(Testimony of William Hasan.)

above that to where the preventer parted, is that correct?      A. That's right.

Mr. Brooke: Your Honor, I don't wish to waive my objection to this man's testimony about what caused the break but I would like to ask a question on that?

The Court: You may cross examine without waiving your objection.

Q. Your opinion was that there must have been a defect, did you see the defect? Did you see any defect in the wire?      A. No.

Q. You are not qualified to tell whether there was a defect or not, are you?

A. Just looking at it I couldn't tell.

Q. I noticed that you said it was about an average load, do [58] you know what kind of lumber it was?

A. I believe it was two by six, but I couldn't swear to that.

Q. And was it about twenty feet in length?

A. Yes.

Q. By average load what do you mean, half a carrier load.

A. Yes sir, sling loads we call them,—two sling loads come in one carrier load.

Q. Who segregates out the size, is that done by the sling men down on the dock?      A. Yes sir.

Q. The size of the loads?      A. Yes.

Q. What do you think the approximate weight of that load was, or can you estimate?

A. A ton or a ton and a half at the most.

Mr. Brooke: That's all.

Mr. Pozzi: That's all.

WILLIAM WILTON GUNN

called as a witness on behalf of the libelant after being first duly sworn testifies as follows:

Direct Examination

Q. (By Mr. Pozzi): Will you state your full name please?      A. William Wilton Gunn.

Q. Where do you live?

A. North Bend, Oregon. [59]

Q. What is your occupation?

A. I am a longshoreman.

Q. How many years have you been longshoring?

A. Oh, for 14 years.

Q. Do you recall this accident which occurred to the libelant here on February 5, 1955?

A. I do.

Q. On that day what gang were you working with?      A. Sixteen gang.

Q. What was your job?

A. I was winch driver and hatch tender.

Q. Were you the winch driver at the time he was hurt?      A. I was.

Q. Mr. Gunn, what hatch were you in at the time he was hurt?      A. Number two hatch.

Q. What time of day did the accident happen?

A. Oh, it was around 12:15.

Q. You were in there relieving number one gang that had gone to lunch?      A. That's right.



(Testimony of William Wilton Gunn.)

Q. When you had come aboard that morning had you rigged the number one hatch?

A. We rigged it, yes.

Q. And what time did you go to lunch?

A. Eleven o'clock.

Q. Now, in your own words, tell the Judge what you did when [60] you got to number two hatch at 12 o'clock up to the time of the accident?

A. Well, I came aboard and it was my time to drive the winch, and I climbed down in the hold and turned the steam on, one load was setting on deck and I hooked on to it and the boys told me to bring it on in and I took that load in and I set it down, I goes back out on the dock and I picked up one more load and I brought it in and set it down in the hold and I went back out to get another load and I brought it up to the top of the ship and the preventer gave and the load went back out on the dock and I was holding it there, I didn't have no hatch tender, Glen was hurt, and so I held it there until Bill Hasan set it back on the dock to keep from hurting somebody. I turned the steam off, — they were going to get a basket to take Glen off with and so I turned the steam on number one gear, took the water out of the winches so I could take him and put him back on the dock in the basket with the gear.

Q. Mr. Gunn, from where you have been sitting in the Court room have you been able to view the moving pictures?

A. I could see a little of it,—a very little.

(Testimony of William Wilton Gunn.)

Q. I will hand you exhibit 7b and ask you if you recognize that as being a shot of the Santorini and the way the lumber was on deck at the time he was hurt?

A. Yes, I do.

Q. Now, will you point out to the Judge where you were at [61] the time of the accident?

A. I was right in here running these handles here, right in between here, in front of the hatch.

Q. Where was Mr. Titus?

A. Right up here, in here (indicating).

Q. Can you show the Judge or tell the Judge where that load was at the time of the accident, at the time the preventer gave way?

A. Well the load was just about even with the top of the deck load which is right here (indicating) but it was out on the Dock. Whenever I brought it to the top I took it across there to try to come as close to the deck load as I can and I started to pulling it across when the preventer gave.

Q. Did you have plenty of drift then from the midship down?

A. Very much so, yes.

Q. Had the load gotten high enough for you to see the whole load before the accident happened?

A. I could see the load as it was, yes.

Q. Could you see the bottom of it as well as the top?

A. Just about, it was just above, well, I would say just about even with the deck load.

Q. Did you have a chance to go over after the accident happened and look over the damage that had been done?

(Testimony of William Wilton Gunn.)

A. I took Glen on the dock in a basket, and when I came back to number two gear to look at it the sailors had taken [61-A] the preventer and stuff away, they had removed it.

Q. Could you state whether or not at the time you were hoisting—strike that please, — Mr. Gunn can you state whether at the time of the accident you were hoisting that load in the usual and customary manner?      A. Yes sir.

Q. Can you state whether or not that was the normal lift?

A. Yes, it was just like we always take.

Q. Now were the winches singled up or doubled up?      A. They were doubled up.

Q. Explain to the Judge what you mean by that?

A. Some ships come in, and we always have the procedure there, that's our safety rule, to double up the winches in taking lumber and that slows the winches down where they run slower which we figure is more safe.

Q. One more question, when that midship preventer gave way did the load strike the deck load at all?      A. No.

Q. How high was that deck load?

A. Six foot approximately.

Q. How long were those stanchions?

A. Oh, eight foot, eight and a half foot.

Mr. Pozzi: You may inquire.

#### Cross Examination

Q. (By Mr. Brooke): I hand you, Mr. Gunn,

(Testimony of William Wilton Gunn.)

photograph which has been identified as [62] respondent's pre-trial exhibit 4a, a picture of the SS Santorini, after the accident. Does that appear to be the Santorini to you?

A. It looks like it, yes.

Q. Did you have occasion to look at the setup of the rope guy at the starboard forward boom in the number two hatch after the accident?

A. No sir.

Q. Did you see it before the accident?

A. I did not, I was driving the winch.

Q. Did you know anything about it?

A. I did not.

Q. Does that appear about the relationship of the deck load with the rail of the ship and the stanchions?      A. Yes sir.

Q. You have heard the word tightlining used haven't you Mr. Gunn?      A. I have.

Q. Will you explain to the Court what that is?

A. That is whenever you take a load up and you don't have quite clearance enough, your offshore and your inshore fall come tight on top, your line on top is completely tight, one straight stretch across the top where ordinarily you should have sag in it, it should be hanging down.

Q. Isn't the result tightlining when one winch is pulling against the other?

A. Well, yes, there would be. [63]

Q. And that puts an excessive strain on your preventer and rope guy does it not?

A. It would if you were tightlining, sure.

Mr. Brooke: Respondent offers exhibit 4a in evidence.

The Court: It may be admitted.

Mr. Brooke: That's all.

Mr. Pozzi: No further questions.

### LEON E. THRUSH

called as a witness on behalf of the libelant after being first duly sworn testifies as follows:

#### Direct Examination

Q. (By Mr. Pozzi): State your full name please? A. Leon E. Thrush.

Q. Where do you live Mr. Thrush?

A. North Bend, Oregon.

Q. What is your occupation?

A. Longshoreman.

Q. How many years have you been a longshoreman,—what year did you start?

A. Somewhere around 1930.

Q. What different jobs have you done as a longshoreman, what are you trained to do?

A. Oh, holdman, dockman, jitney driver, winch driver and hatch tender.

Q. Were you working on the SS Santorini on the 4th and 5th [64] days of February 1955?

A. I was.

Q. Where was the vessel lying?

A. The Coos Bay Lumber company dock.

Q. Was she lying starboard or port side to?

A. Port.

Q. What gang were you in?



(Testimony of Leon E. Thrush.)

A. Number one.

Q. What was your job on number one gang?

A. Winch driver and hatch tender.

Q. Do you recall what time you started to work,  
—what day you started on the Santorini?

A. I believe it was on Friday at one o'clock.

Q. That was Friday the 4th?

A. I believe so.

Q. What hatch was your number one gang assigned to?      A. Number two.

Q. Is that considered the long hatch or the big hatch?

A. Usually it is the big hatch on a Liberty ship.

Q. Was this a Liberty type vessel?

A. It was.

Q. Now, did you have any trouble with the gear on Friday the 4th of February at the number two hatch?

A. We broke the preventer on the midship boom.

Q. What time of day did it break?

A. Somewhere around four o'clock. [65]

Q. Do you recall what the cause of that was?

A. It was just rusted out up by the eye, at the end of the boom.

Q. Was there another preventer put on?

A. There was.

Q. Who put it on?

A. Sailors,—ship's crew anyway.

Q. On February 5, 1955, what time did you go to work, that would be the next day?

A. Eight o'clock.

(Testimony of Leon E. Thrush.)

Q. Was it necessary to do anything with the gear at the number two hatch when you came at eight o'clock?

A. We had to rerig the midship boom.

Q. Who was in charge of that?

A. Ordinarily it would be our boss or the hatch tender, I supervised the rigging of that, that morning.

Q. You are the man that did it, is that right?

A. Supervised it.

Q. Will you explain the setup on that rail, explain it to the Judge, as to cleats and pad eyes, what did you have?

A. I believe there was a cleat in the middle and two pad eyes on each side, two forward and two aft, of the cleat, almost abreast of the masthouse.

Q. Did you use the cleat to tie her off on the morning of the fifth?      A. No we did not.

Q. Why didn't you?

A. Number one gear had got there first and had the cleat used. [66]

Q. They beat you to it, is that right?

A. That's right.

Q. Ordinarily are there two cleats or one cleat on a ship?      A. Usually two.

Q. On this kind of a setup?

A. There is usually two.

Q. And were there on this ship?      A. No.

Q. Now, since the number one had already gotten to the cleat first, how did you rig?

A. We went through the forward pad eye first,

(Testimony of Leon E. Thrush.)

that's to bring the boom down through the forward pad eye, back through the after pad eye and I think they went around and around through the two pad eyes and then a half hitch, with the end to a pad eye or back to the grounded parts of the line.

Q. Why didn't you go through the after pad eye first, why didn't you go through that?

A. It wouldn't have given us quite as good a lead from the boom to the rail and it would have increased the leverage that the boom would have had on the preventer.

Q. Will you explain what that had to do,—where you placed the preventer through on the rail, what that has to do with safety?

A. If the guy wire was put in the best place possible it would be directly out from the pull that you are going to have on your boom, there is nothing out there but water so [67] you would have to come back down to the rail on an angle, so you get the longest angle that you can without getting too far back so your boom will topple.

Q. Is that what you did with what you had to work with that morning?

A. That's what we did.

Q. What size wire was that?

A. I would say it was three-quarter in diameter.

Q. Do you recall the number of strands, was it six?

A. Six strands.

Q. Before you started longshoring did you ever work in the woods?

A. I did.

Q. What did you do in the woods?

(Testimony of Leon E. Thrush.)

A. Choker setter, chaser, and rigging slinger.

Q. Were you in the service during world war two?      A. I was.

Q. Did you serve in Europe?      A. Yes.

Q. What branch of the service were you with?

A. Army engineers.

Q. What was your rating?      A. T 4.

Q. What does that mean?

A. Technical Sergeant.

Q. Did you have anything to do with wire rope?

A. The T was for rigging, rigging rating I think it is 198 or [68] 189 in the army regulations or whatever you call it.

Q. Did you handle European wires as well as American wires while you were in Europe?

A. Nothing but European wire so far as I know.

Q. Will you state whether or not European wire is ordinarily hard or soft wire?

Mr. Brooke: I object to that your Honor, what happened in world war two as compared to the present situation—

Mr. Pozzi: All right, I will withdraw it. Now, I will offer 4 and 5 which have previously been identified.

Q. Mr. Thrush, I hand you what has been marked 4 and 5, is that hard wire?

A. I would say it was soft wire.

Q. Do you generally find that kind of wire made in the United States?

A. I don't believe that I have ever seen this kind or brand of wire, let me put it this way, I don't

(Testimony of Leon E. Thrush.)

believe I have ever seen a United States Brand on this kind of wire, I don't know for sure.

Q. During your years as stevedore where have you occasionally seen this kind of wire, or where have you seen it.

A. Usually on a foreign ship.

Q. I will ask you to take a look at this wire in the box here (indicating) is this the same stuff that you have in your hand? [69]

A. I believe it is.

Q. You mentioned that this is a softer type of wire, can you demonstrate to the Judge by the use of that wire with a harder type of wire,—is it possible for you to demonstrate with your hands to show the difference between what is known as hard wire and soft wire?

A. This soft wire is similar to a piece of bailing wire if you bend it that way, it stays bent, and a hard wire would snap back quite a ways, maybe not all the way but most of the way. It wouldn't stay bent.

Q. Do you know the kind of wire, using the words 'hard' or 'soft', the kind of wire that should be used on a preventer?

Mr. Brooke: We object to that on the ground that the witness is not qualified to answer the question.

The Court: I will let him answer.

A. The kind that I feel safe around is American made eight strand or six strand, harder wire than this.



(Testimony of Leon E. Thrush.)

Q. I hand you what have been marked as exhibit 8, three-quarter, eight strand by nineteen,—you saw this this morning here in Court, I showed it to you. Will you state whether or not that is a hard or soft wire?

A. That is what I would call ordinarily, more or less a soft wire in American wire,—there is American wire a lot harder than this, a lot springier. [70]

Q. Can you show the Judge with that and the exhibit in your hand, the difference in the wires?

A. Well, one strand bent and let loose comes back, will spring right back, much springier than this. This stays put.

Mr. Brooke: It is a question of relative strain.

Q. If you bring this (indicating) down it wouldn't snap back that far? A. That's right.

Q. Mr. Thrush, would you, assuming that the gear and the load was where Mr. Titus and the other witnesses have said, that is, that the load was being hoisted up and the angles were as you left them at noon time when you went to lunch, the load was just being taken with the strain on the midship to pick it on in and at that point the preventer broke. Do you have an opinion as to what caused the break?

Mr. Brooke: Your Honor, we object, this man has not made an examination of the wire from a metallurgic standpoint and his answer would be purely speculative, he hasn't determined whether there were any defects in the wire, what the pull strength of the wire is. I don't think he has had any

(Testimony of Leon E. Thrush.)

scientific training of any kind and I think his answer would be without any significance in this case.

The Court: I am inclined to agree with you but this being a court matter, I will let him answer now and I will determine later what weight to give this [71] testimony later.

A. It would be my opinion that the wire used in the preventer just wasn't strong enough to handle the load, whether there was a defect in it or not, I wouldn't be able to say, but there shouldn't have been enough strain on that load to break the preventer.

Q. Now, what is the purpose of the preventer and this rope guy, will you explain the purpose of those?

A. A guy to hold the boom back up in position where you want it held, to give you the proper position of the booms on the ship. The preventer and the guy holds it in position. It's the same as a guy wire on a telephone post, it keeps it from pulling through your load all the time, otherwise it would swing.

Q. Now, what is meant by equalizing the preventer and the guy?

A. Usually we make our preventer,—in number one gang, we make our preventer fast or solid, we throw all the rope guy loose and pull on it with a cargo hook fastened to the deck to take all the slack out of the preventer and then we pull our rope guy back up, take a turn on the cleat and then let it slip

(Testimony of Leon E. Thrush.)

in until we can get the tension on the rope and the preventer as near equal as possible.

Q. On the morning of the 5th of February did you equalize the guy and the preventer?

A. We did.

Q. The fact that they both broke will you state if that is a [72] sign that you had them equalized?

A. They were pretty well equalized or they would have both broken almost together.

Mr. Pozzi: You may inquire.

#### Cross Examination

Q. (By Mr. Brooke): Will you describe the rope guy that hooked to the midship boom?

A. Describe the rope guy?

Q. The Block and tackle arrangement.

A. I believe it was two double blocks that the rope was brought through them.

Q. Does the rope start first at the lower block and go up and down and then up and hook to the rail?

A. Hook to the rail,—oh, I get what you mean.

Q. The end of the rope is secure to the rail isn't it?

A. I would have to stop and figure out where that was fastened to.

Q. I hand you, Mr. Thrush, respondent's exhibit 4a. This shows the Port side of the vessel and it also shows——

A. It should be about here.

Q. It shows a block and tackle arrangement and

(Testimony of Leon E. Thrush.)

rope guy, I think on number three hatch, is that approximately the type of arrangement you had?

A. Yes, sir, it was a double and single block.

Q. That gives you four runs of the rope? [73]

A. Yes sir.

Q. You never had any metalurgic experience, any scientific training in any college or university, have you Mr. Thrush?

A. No, only when I was dock foreman and figuring for the strength of wire.

Q. Have you had any experience in chemical work in analyzing wire? A. No.

Q. Where were you at the time of the accident?

A. I believe I was at Mack's seafood tavern eating dinner.

Q. You were not there at the ship?

A. No, it was my lunch hour.

Mr. Brooke: That's all.

#### Redirect Examination

Q. (By Mr. Pozzi): Do you ever hoist cargo gear on rope guy alone,—do you ever hoist lumber on a rope guy without a preventer? A. No.

Q. Why wouldn't you?

A. It wouldn't be strong enough alone.

Q. It won't hold it alone?

A. It won't hold it.

Q. Then is it true that the purpose of the preventer wire is to hold the weight of the load?

A. Yes sir.

Mr. Pozzi: That's all. [74]

(Testimony of Leon E. Thrush.)

Recross Examination

Q. (By Mr. Brooke): It's the purpose of both to hold? A. Yes.

Mr. Brooke: That's all.

Mr. Pozzi: Yes, that's all.

JOHN P. JOHNSON

called as a witness on behalf of the libelant, after being first duly sworn testifies as follows:

Direct Examination

Mr. Pozzi: Before we start on this witness I notice that counsel had offered respondent's exhibit 4a yesterday and I would like to ask counsel when this was taken, about what date?

Mr. Brooke: That was taken about the 11th.

Mr. Pozzi: I notice that it shows that the ship was further down in the water.

Mr. Brooke: It was not for the purpose of showing the height of the ship.

Mr. Pozzi: Very well.

Q. Will you state your full name?

A. John Pete Johnson.

Q. Where do you live?

A. North Bend, Oregon.

Q. How old a man are you? [75]

A. Fifty-eight will be fifty-nine next September.

Q. What is your occupation?

A. I am employed as a longshoreman, as a hatch boss.



(Testimony of John P. Johnson.)

Q. How many years have worked as a longshoreman, what year did you start?

A. I started in 1914, but I worked continuously at longshoring since 1924.

Q. What other kind of work have you done beside longshoreman?

A. I have worked in the woods.

Q. You have also been a logger?

A. That's right.

Q. You say you are a hatch boss, how long have you been a hatch boss, about what year did you start that?

A. About '34.

Q. Now you were the hatch boss on gang number 16, on February 5, 1955?

A. That's right.

Q. The libelant here Glen Titus was one of your winch drivers?

A. That's right.

Q. When you went aboard the Santorini what hatch did you start to work in?

A. We started in number one hatch.

Q. And why did you shift into number two?

A. On account of number two being the big hatch and number one the smaller than number two, why, if they can get the noon hour in there they get extra time in which helps to [76] even up the loading of the hatches.

Q. What time did your gang shift into number two hatch?

A. We went to lunch at eleven o'clock and came back to number two at twelve o'clock.

(Testimony of John P. Johnson.)

Q. When you shifted to number two, you came back at twelve o'clock to turn the gang to?

A. That's right.

Q. Then what did you do if anything.

A. For one thing we checked the gear.

Q. Why did you check the gear?

A. On account of what had happened the day before I thought it would be for the safety of the gang that I would, I checked it myself personally.

Q. You always double check everything yourself? A. Yes, I do.

Q. Now, just tell the Judge how you checked over the gear?

A. I went over to the rope guy and wire preventer and felt of them, what the tension is on there and at the same time I examined how the wires and everything is fastened.

Q. Now, there has been testimony here I think on the side next to the dock,—on the side away from the dock, the off-shore.

A. The off-shore side.

Q. How was the ship lined to the dock, that is port or starboard? A. Port to the dock.

Q. Port to? A. That's right. [77]

Q. Were you at the hatch when the accident happened?

A. I was at the after end of number two hatch when the accident happened?

Q. Port or starboard? A. Port.

Q. From where you were standing could you see

(Testimony of John P. Johnson.)

the libelant Glen Titus and did you see him at the time of the accident, from where you were standing?

A. Yes.

Q. Did you see Mr. Hasan, the Walking Boss?

A. Yes.

Q. Where was he standing in relationship to you?

A. He might have been a little further back.

Q. He was near you, was he?

A. He was not far away, but whether he was in front or in the back I don't know.

Q. Now, tell the Judge in your own words what you observed, what you saw happen?

A. Well, Mr. Titus gave signals to bring up the load from the dock and about,—I would say, when it was about to the top of the deck load, about there, the offshore rigging, I mean the rope guy and preventer carried away and the load would naturally have to swing out on the dock on account of the offshore gear carried away. Mr. Gunn who was driving winch done wonderful by not dropping that and hurting someone else out there on the dock. [78]

Q. Now, could you tell the Judge where the load was when the preventer gave way in relation to the bull rail of the ship?

A. I would say it was practically on top of the deck load.

Q. Now, in relationship to the bull rail,—just hold your left hand up and make that the bull rail and just show the Judge where the load was?

(Testimony of John P. Johnson.)

A. Here—

Q. Put the other hand where the load was? Do you understand what I mean?

A. Yes, I understand, I would say it was possibly two or three feet above,—about in here (indicating).

Q. At that point when the preventer broke how much drift did you have on that yard arm?

A. At that point where the load was when the preventer broke do you mean?

Q. Yes. A. Maybe fifteen feet.

Q. And how much drift did you have on the midship?

A. We generally taut that up to the limit. I don't know the exact length of the boom but I would say in the neighborhood of thirty feet,—about thirty feet.

Q. You might explain to the Judge what you mean by drift?

A. Drift is to avoid tightlining, we taut the midship as tight as we can so that you have the lifting instead of tightlining, and the more drift you have, naturally, the easier tension you have on the gear.

Q. After the accident happend what did you do?

A. Well, it's a rule of the Union that I have to go, with the man, to the Doctor in the ambulance, and that's what I did. That's what I did when the ambulance got there but before that naturally I went up to see what was the matter with Mr. Titus

(Testimony of John P. Johnson.)

and see that we got a Doctor, I mean to get an ambulance to get him to the hospital.

Q. You took charge, in other words, to get him off the ship and get him to the hospital?

A. With the aid of the walking boss.

Q. Did you go with Mr. Titus to the hospital?

A. I did.

Q. Will you state whether or not at the time the preventer gave way, that the hoisting operation was being done in the usual and customary manner?

A. Yes.

Q. And according to the usual and customary practice?      A. I would say it was.

Q. There has been talk about a rope guy and a preventer guy, do you ever hoist cargo by using the rope guy without a preventer?

A. No, it is not the practice.

Q. Why isn't it?      A. For safety.

Q. What do you rely on to hold that boom out?

A. The wire preventer. [80]

Q. Now, if the wire carries away what effect does the rope guy have?

A. If the wire carries away, most generally the rope guy will carry away too, that is because it wouldn't be able to take the strain that broke the wire.

Mr. Pozzi: You may inquire.

Cross Examination

Q. (By Mr. Brooke): Mr. Johnson, did you work the ship the day before the accident?



(Testimony of John P. Johnson.)

A. No, I didn't.

Q. I mean the SS Santorini?

A. I came on the morning the accident happened, there was other gangs that maybe was on there but we wasn't.

Q. When your gang shifted to the number two hatch, did I understand you to say that you went over and felt the tension on the preventer wire and rope guy?      A. That's right.

Q. To find out if they equalized, is that the purpose?

A. That's right, and to see how they were secured.

Q. Was the strain equalized?

A. I would say it was, otherwise we wouldn't have went to work.

Q. Did you make an accident report to anyone as a result of this accident?

A. I have got to make a report of any accident.

Q. What was that Mr. Johnson? [81]

A. I say I have to make a report where any accident happens.

Q. Do you have that with you?

A. No, I am sorry, that was turned over, I imagine to our dispatcher,—our Union.

Mr. Brooke: Do you have that counsel, it is listed as an exhibit.

Mr. Pozzi: What I listed, I think, was the accident report of the walking boss, wait a minute, I

(Testimony of John P. Johnson.)

believe I have a copy. I will have this marked as exhibit 10.

Mr. Brooke: That's all the questions I have to ask this witness at this time.

### Redirect Examination

Q. (By Mr. Pozzi): Do you make your report out separately from the walking boss?

A. Yes sir.

Q. Do you see the walking boss's report before you make yours out or afterward, or what? How do you work that.

A. I make my report out and then if I have a chance I will check with the walking boss and see how we compare on the accident.

Mr. Pozzi: Now, Your Honor, I am going to offer this since counsel mentioned it. I have a copy and I didn't have the original, I have this copy and it is typed and I offer it as libelant's exhibit 10 for identification [82] which purports to be a copy of the statement signed by walking boss W. Hasan. It is entitled Glen Titus, Number 286, February 5, 1955, hour 12:15 P.M., Date accident reported to foreman,—the same. Ship, Santorini. Dock, Coos Bay Lumber. On ship or dock,— on ship Number 2 hatch. How did accident occur? Preventer on starboard boom swung over hatch and tender in trying to get safely away, slipped on deck, right leg going underneath pile of hatch covers on deck, twisting right knee and ankle. Part of body injured,—right

(Testimony of John P. Johnson.)

knee and ankle twisted, hatch boss J. P. Johnson, Number 140. Witness, W. Gunn. Sent to Doctor,—yes. Were wages paid for full day, no. I will offer this.

Mr. Brooke: Your Honor, this is Mr. Pozzi's typewritten paper here. I think the document is incompetent, what we are asking for is this man's report.

Mr. Pozzi: Counsel knows how to get this report and he has made no effort to do so, now if he is raising any question at all—

Mr. Brooke: —The point is, I asked that be produced and you come ahead and produce this.

Mr. Pozzi: This is the first that I have heard about it.

Mr. Brooke: I said I asked the witness if he had it or if you had it. [83]

Mr. Pozzi: No, we don't have it, but you are welcome to this.

Mr. Brooke: I think this is incompetent.

The Court: I will sustain the objection. I don't think it is material here.

Mr. Pozzi: That's all.

Mr. Brooke: Nothing further.

Mr. Pozzi: I would like to clear with the Clerk on the exhibits not admitted.

The Court: Certainly you may do so.

Mr. Pozzi: The exhibits that are not admitted but just marked, I would like to offer them at this time. I think the series 7, the pictures are not ad-

mitted and I would like to offer them, number 7b, 7c, 7d, 7e, 7f, 7g and 7b, there seems to be two 7b's, and 7a.

Mr. Brooke: I understand these are offered for the purpose of illustration, if that is correct I have no objection.

The Court: That is right.

Mr. Brooke: I have no objection.

The Court: They may be admitted.

Mr. Pozzi: I believe the moving picture is already admitted in evidence.

The Court: It is admitted, yes.

Mr. Pozzi: And this wire that was referred [84] to as Exhibit Number 9, that Exhibit was referred to but not offered or admitted.

Mr. Brooke: I object to the admission of that wire, I can't see any relevancy to that.

Mr. Pozzi: I will offer it, Your Honor.

The Court: It may be admitted.

Mr. Pozzi: Now, I will ask the Clerk if he has Exhibits 4 and 5 as being admitted, and if not I will offer those.

The Court : They may be admitted.

Mr. Pozzi: The libelant rests. [85]

### HARRY CZYZEWSKI

called as a witness by the Respondent, after being first duly sworn testifies as follows:

#### Direct Examination

Q. (By Mr. Brooke): Will you state your full name please?      A. Harry Czyzewski.

(Testimony of Harry Czyzewski.)

Q. And do you reside here in Portland?

A. Yes sir, I do.

Q. What is your profession?

A. I am a metalurgical engineer.

Q. Where are your offices?

A. The offices of my company Metalurgical Engineers Incorporated are at 2340 Southwest Jefferson, they are located in the Charlton Laboratories Building.

Q. Now, where did you receive your college training?

A. I have a Bachelor of Science degree in metalurgical engineering from the University of Illinois and also a Master of Science degree from the same university.

Q. And did you go on and do any teaching after that?

A. Yes sir. I spent four years as assistant professor at the University of Illinois, 1947 to 1951.

Q. And then what did you do?

A. I have been manager of Metalurgical Engineers Incorporated here in Portland since that time.

Q. Do you belong to any metalurgical societies?

A. Yes, I do, I belong to the American Institute of Mining and Metalurgical Engineers, also the American Foundrymens Society.

Q. Have you written any papers for any of those societies?

A. Yes, I have had papers published by both of



(Testimony of Harry Czyzewski.)

those societies and the society of Mechanical Engineers.

Q. Have you been on the research Department of any Corporations?

A. I spent forty months from 1946 on the research department of Caterpillar Tractor Company.

Q. Does your company make any tests or research for companies in this area at the present time?

A. Yes, the Metalurgical Engineering Company have an engineering testing laboratory and we, in that capacity, perform a great many tests on metal products.

Q. For various companies?                   A. Yes sir.

Q. Does that include work with steel wire rope?

A. Yes, we have made many tests on steel wire rope?

Q. Have you testified as an expert in Court,—as a metalurgical expert?

A. I have, yes, I am a registered professional engineer in the states of Oregon and Illinois.

Q. Who do you do testing work for in this area?

A. A wide variety of firms, if you have in mind specifically any work—

Q. Can you name several?

A. We have the Heister Company; Iron Fireman Manufacturing; The Willamette Iron and Steel Company; the Northwest Marine Iron works; The Alpine Engine and I could list a great many of them, firms in town here.

(Testimony of Harry Czyzewski.)

Q. Do you do any work for public bodies,—the Government?

A. Yes, we do. We have made tests for the Bon-neville Power Administration. We do Welder qualification work under the Bureau of Labor.

Q. Have you done work for the Army Engineers?

A. Yes, we have done work for the Army Engineers; the Navy; the American Bureau of Shipping. We are a certified laboratory for those and we are also certified by the Air Force.

Q. And what is your position up there?

A. I am the manager.

Q. Mr. Czyzewski, the Bailiff has handed you a box containing two pieces of wire rope, or two pieces of one wire rope, will you please examine those and state to the Court whether you have ever seen those before?

Mr. Pozzi: We object to that question, counsel is assuming that they are two pieces of the same rope. I object to the form of the question. [88]

Mr. Brooke: If your Honor please, the deposition of one of Respondent's witnesses, exhibit 7 established the fact that these pieces came from each side of the wire that parted on the ship, and we will tie that in with these depositions.

Th Court: Go ahead.

Q. Have you examined those exhibits?

A. Yes, I have.

Q. And have you seen those before?

(Testimony of Harry Czyzewski.)

A. I have, yes, I have tags with my name on identifying those two pieces.

Q. Where did you get the two pieces?

A. I received them from you.

Q. Did you have an opportunity to make a metalurgic examination of those wires at my request?

A. Yes sir, I made several types of examination.

Q. What type of examination did you make?

A. The fracture area I examined visually and with a,—what we call a wide field binocular microscope with magnification up to twenty-five power. We also made an examination—samples were taken from the parted ends of the ropes and we made a hardness test on the samples and also a metalographic examination of the internal structure of the metal.

Q. At the fracture site did you find that the wire was intact completely or were certain sections removed. [89]

A. It appears that several strands had been removed by cutting.

Q. How many strands?

A. There were two strands on one length and one on the second. I would have to refer to my notes to identify them with the exhibit.

Q. Did you have opportunity to examine the missing strands from the wire after you informed me that there were certain strands missing?

A. I had an opportunity to examine some missing strands.

(Testimony of Harry Czyzewski.)

Q. Was that in Mr. Pozzi's office?

A. It was.

Q. How many did you examine?

A. May I check my notes on that?

Q. Yes, you may.

A. I had marked two twelve inch lengths of strand and one twenty-four inch length, I have marked here that the stubs opposite the fractured end were painted green on the twelve inch lengths and on the twenty-four inch length the stubs were painted a pink.

Q. Do you have the two green ones?

A. Yes.

Q. Now, what is the size of that wire, will you explain that to the Court?

A. We classify that as a three-quarter inch wire rope, six by twenty-four,—seven fiber. [90]

Q. What do you mean by seven fibers?

A. That means that there is a fiber in the center of each of the six strands and also in the center of the rope.

Q. Now, what, if anything, in the way of defects did you find at the fracture site, or in the wire?

A. At the fracture we made a visual examination and we found that the failure was typical of a tensile or a pull type of break. We found that in one of these lengths of wire there was a bend in several of the strands adjacent to the site of fracture. Beyond that we were not able to identify any

(Testimony of Harry Czyzewski.)

defects. We were looking particularly for corrosion, wear, signs of brittleness and such things as that.

Q. And you didn't find any?

A. We were not able to find any.

Q. And you were able to determine that the wire parted as a result of tensile pull, is that correct?

Mr. Pozzi: We object to that as counsel is leading the witness.

The Court: He may answer.

A. Our findings were that the break was characteristic of a tensile break.

Q. Can you draw that on the Board, show the Court,—can you explain that?

A. Starting with an individual wire, a round wire of this type, when the wire is loaded in tension and when the pull is in this direction (indicating) it starts to [91] stretch and when it passes the yield point the wire stretches permanently until it reaches the level of its ultimate strength at which time a ductile wire will produce what is called a necking down, and have an effect of this type (indicating). This necking down is a characteristic of ductile steel failures. The actual characteristic is measured and reported in properties in steel and is referred to as a reduction in area or part of the tensile break. This is a characteristic of tensile failure and it is very easy to identify a tensile failure because of it.

Q. Can you clarify to us what exactly do you mean by a tensile break?

A. The term tensile refers to pull. In other



(Testimony of Harry Czyzewski.)

words, a pulling apart and that technical term is tensile,—in contrast the pushing together or compressive which is the pushing together or tearing apart at right angles.

Q. And from your examination of this wire you were able to determine that was a tensile break in this case?      A. That's correct.

Q. Will you state whether or not you were able to determine what the tensile breaking strength of this particular wire was?

A. We made an effort to do that without actually running the strength test, and the manner in which that was done was to take that section away from the fracture and to make a hardness test of the individual wires and estimating from [92] the hardness test and the size of the wire the tensile strength of the rope.

Q. What did you find was the tensile strength of the rope?

Mr. Pozzi: Objected to Your Honor on the ground that there is no proper foundation laid to make a determination of what the strength was. In order to make such determination he would have to assume an exact duplication of what occurred at the time of the accident, that is,—the angle of the boom, the weight of the load, whether the lift was still or swinging, the height of the boom, the strength of the winch, the pull power in order to determine the breaking strength.

The Court: I will let him answer.

(Testimony of Harry Czyzewski.)

Q. Now, what did you determine to be the tensile strength of this wire?

A. On the basis that I have stated we determined it to be 14.4 tons.

Q. The breaking strength?           A. Yes.

Q. In your experience in actually testing wires after you have computed the breaking strength as you have done with this wire, how would your test come out, that is, what is the relation of the test to the actual strength?

A. We have found that they were reasonable valid, a little on the conservative side. We have found the actual tensile strength could run as high as ten per cent above the calculated values. [93]

Q. Did you examine wire rope booklets with respect to the breaking strength of comparable wire to the one we have in this case?

A. You mean catalogs?

Q. Yes.           A. Yes, I did.

Q. And what did the catalog indicate as the breaking strength of this type of wire?

Mr. Pozzi: We will object to what a catalog indicates.

The Court: He may answer.

Q. I have before me the supplement to catalog 1 of British Ropes Limited of Vancouver B. C. and they list the breaking strength of extra flexible hoisting rope construction 6 by 24 seven fiber core as I have identified this rope, in the mild plow steel of three quarters inch diameter to be 17.7 tons.

(Testimony of Harry Czyzewski.)

Q. And was it your determination that the wire in our case was mild plow steel?

A. We made the determination based on hardness and metalographic examination that this wire most closely conformed to mild plow steel.

Q. Now, do you have your machinery handbook with you?      A. I do.

Q. Can you, or maybe you have already checked and have it in your notes, do you know what the tensile breaking strength [94] of  $\frac{5}{8}$  inch 6 by 19 plow steel wire is?

A. At the time of our investigation I had made notes to the effect of that strength, and I have it here. The minimum breaking strength of  $\frac{5}{8}$  inch mild plow steel 6 by 19 hoisting rope, I found to be 13.1 tons.

Q. My question was plow steel, not a mild plow steel?      A. The plow steel was 14.4 tons.

Q. That is the same figure you found to be the strength of our wire here?

A. It came out to be that close.

Q. Did you refer to your table to find out what the breaking strength of one inch diameter or three inch circumference three strand manila rope would be?

A. I found from catalog data that manila rope one inch diameter three strand type was 9,000 pounds or four and a half tons.

Q. When we say one inch in diameter what does that come out in circumference?

(Testimony of Harry Czyzewski.)

A. That is listed as a three inch circumference type of rope.

Q. If a rope,—one inch diameter rope passes through a block starting from the bottom block and going up once, down, up and then secured down so that there are four separate lines running down does that, from an engineering standpoint increase the strength of that rope four times?

A. The carrying power of the assembly would be increased by the number of turns of rope used.

Q. If there were four lines, the strength of the assembly would be increased four times, is that correct?

A. That is correct.

Q. Now, if a steel wire rope such as the type we have in this case is leading down from a boom to a pad eye where it takes a sharp turn before it is secured to the rail, what effect, if any, does the sharp turn have on the weakening of that wire a distance say, a foot or a foot and a half away from the turn?

A. The effect of the turn is reduced to a negligible effect after one lay,—one rope lay, I haven't determined exactly how much one lay would be in this rope but I think it is about,—well, maybe I better look and give you the specific figure, it appears to be about six inches.

Q. Then the weakening effect would be confined to a space of about six inches?

A. That's right.

Q. And as you move further away from the apex the weakening effect becomes less through

(Testimony of Harry Czyzewski.)

that six inches does it not? A. That is correct.

Mr. Brooke: No more questions.

### Cross Examination

Q. (By Mr. Pozzi): In order to determine the weakening effect at the apex you would have to know the angle at which the wire was broken, wouldn't you? [96]

A. The angle and the diameter of the bend.

Q. Yes,—and it may be greater or less depending on the angle and size of the bend?

A. It would be influenced very greatly by the bend.

Q. You have appeared as a witness for the office of Wood Matthiessen, Wood and Tatum before? A. Yes.

Q. Do you expect to be paid for your testimony here today? A. Yes.

Q. In your direct testimony you said that you took some samples from the end of the wire. How many samples did you take in the test, from the end of the wire?

A. We took three strands from each side.

Q. And there are how many strands?

A. Six.

Q. And did you test the very end of each wire in each strand?

A. Maybe I better show how the test is done—

Q. —And if you will answer my question first, did you test the end of each wire of each of these strands that you tested?



(Testimony of Harry Czyzewski.)

A. I think if I described how it was done you would see then that an end was tested, you said the ends, there are several ends involved and there is where I am having trouble answering the question.

Q. All right, go ahead.

A. We took three strands and mounted them in this plastic so that they would be convenient to hold. You see the way [97] you polish a section perpendicular, or rather we polished a section perpendicular to the line of the rope, now we made our examination, metalographic examination of this cross section, the internal structure of the metal and we made our hardness test on this end that is exposed.

Q. You have in that end a full strand, is that right?

A. Three strands in each of the mounts.

Q. How many wires are in each strand?

A. Twenty-four.

Q. And did you test each of the twenty-four wires in each of the strands?

A. No, we made a sampling of the wires in each of the strands.

Mr. Pozzi: That's all.

Mr. Brooke: We would like to offer in evidence the exhibits testified about.

The Court: They may be admitted.

#### Redirect Examination

Q. (By Mr. Brooke): You have also testified against us have you not?

A. Yes, I have.

Q. You say you have?

(Testimony of Harry Czyzewski.)

A. Yes. I may have misinterpreted a question of counsel's I want to say that I will not be paid for my testimony, I will be paid as an expert witness.

Mr. Brooke: That's all. [98]

Mr. Wood: Your Honor mentioned last night when the statement was made concerning a witness that was not available, that counsel may be able to stipulate as to what the witness would testify to if called. I have discussed it with Mr. Pozzi and we have been able to stipulate.

The Court: I thought you could.

Mr. Wood: The witness is Captain P. Larsen and if called he would testify that he has had past experience as a mate and captain sailing with the American Merchant Marine and that his occupation is that of a Marine Surveyor and that he has been a marine surveyor in Portland for the past ten years,—that the usual custom and practice of American Ships, both Liberty ships and Victory ships is to make up preventer wires out of  $\frac{5}{8}$  inch plow steel wire. That it is customary in the practice to make up such preventers out of sections of the same wire as is used for winch runners and that the breaking strength of such preventer wires is 14.4 tons, also that he has examined the manila rope in this case exhibits of which will be introduced, being the manila rope,—that that is what is termed three inch rope having a diameter of one inch and that it is substantially new rope and that it is in good condition and that the standard cata-

logued breaking strength of such rope is nine thousand pounds,—that when it is rolled through blocks so that you have four lengths [99] of rope that you get the strength multiplied four times. That would be his testimony and I think counsel will stipulate that Captain Larsen would so testify that these are facts.

Mr. Pozzi: It is so stipulated with the additional stipulation that what is called  $\frac{5}{8}$  inch plow steel is commonly referred to in our country and other countries as hard wires.

The Court: I thought you would stipulate to those facts, in fact, I don't think I have had attorneys that were so agreeable in my Court before.

Mr. Wood: I think we can agree that there are various degrees of hardness, there is what is called plow steel, mild plow steel and improved plow steel. I think it can be stipulated that plow steel is a degree of hardness above mild plow and improved plow is a degree of hardness above plow steel.

Mr. Pozzi: Yes, it is so stipulated.

### HERMAN LARSEN

Called as a witness by the Respondent, after being first duly sworn testifies as follows:

#### Direct Examination

Q. (By Mr. Wood): State your name to the Court?      A. Herman Larsen.

Q. Where do you reside? [100]

A. At 5026 Northeast 10th Avenue, Portland.

Q. What has been your past experience aboard ships and in connection with ships?

(Testimony of Herman Larsen.)

A. Well, sir, my entire life you might say has been connected with ships, I started following the sea as a boy in the old country where I was born and I continued with that right up to the present date.

Q. How old are you Mr. Larsen?

A. I am sixty-nine.

Q. Do you have a license with the American Merchant Marine?

A. Yes, sir, I have a masters license the Ninth issue.

Q. And have you sailed as an officer, a mate in the American Merchant Marine?

A. Yes, sir, since 1916.

Q. What are some of the Companies you have sailed for?

A. The Madsen Steamship Company, The States Line out of Portland, The West Coast Trans-Oceanic, the Old Pacific Coast Steamship Company.

Q. For the Court's information, which officer on the ship is generally in charge of the rigging, of the Cargo gear.

Q. The Chief Mate is the man who is considered to supervise the rigging of the cargo gear.

Q. And have you sailed as Chief Mate for all of those companies that you mentioned?

A. Yes, sir.

Q. Have you sailed as Master?

A. I have been Master since 1934. [101]

Q. For what companies have you sailed as Master?

(Testimony of Herman Larsen.)

A. The States Line, and the West Coast Trans-Oceanic.

Q. What type of ships?

A. Liberty ships and Victory ships.

Q. Did you sail all through the war?

A. Yes, sir.

Q. Have you had stevedore experience?

A. Yes, sir, I was walking boss for the Oregon Stevedore Company from 1920 to 1922, the month of April.

Q. Did you ever do work for the Luckenbach Steamship Company?

A. Yes, sir, during that period I was walking boss for the Luckenbach Company also.

Q. Captain Larsen, what type of wire is usually and ordinarily used on American ships, liberty type ships for making up preventer wires.

A. Preventer wires are usually made up from Cargo runners that have been damaged, that is, kinked in some way where they are no longer used as Cargo runners. The good part is then used for preventer wires that usually is  $\frac{5}{8}$  plow steel wire.

Q.  $\frac{5}{8}$  plow steel wire?           A. Yes, sir.

Q. You say Cargo runners that have been damaged, do they use the damaged parts in making up preventer wires?

A. No, sir, only the good part is used. I might explain it this way,—the cargo runners on Liberty ships is usually [102] 190 feet, that is the general length, while the cargo preventer on the cargo boom are about 100, 110 or 115 feet long, and you



(Testimony of Herman Larsen.)

can see the good part can always be used as a preventer.

Q. And they cut out the bad sections?

A. That's right.

Mr. Wood: Before I refer to these and maybe offer them in evidence I will say to the Court that at least we will connect them up. They are identified in the deposition of the Chief Mate of the ship.

The Court: Very well, you may proceed.

Q. Captain Larsen, referring to exhibits 3c and 3d, the two sections of rope, have you examined those? A. Yes, sir.

Q. What size rope is that?

A. That's three inch manila.

Q. You have examined that, have you?

A. Yes, my observation tells me that it is substantially good rope, it is not old and it has not been abused in any way.

Q. Captain Larsen, what is the size of the rope ordinarily used on ships for the rope guys used to guy out the booms? A. Three inch manila.

Q. Is that the same as you hold there?

A. The same as this rope here.

Q. Captain Larsen, have you in your experience known of gear, that is, preventer wires and rope guys in good condition, to break? [103]

A. No, I would say this, rope comparatively new three inch manila with a preventer guy of  $\frac{5}{8}$  inch plow steel wire, it would have to be something radical to make anything carry away there, be-

(Testimony of Herman Larsen.)

cause you have practically twice the tensile strength in holding your boom to what you have in lifting your cargo pull.

Q. What could be the causes of breaking if the gear is in good condition?

Mr. Pozzi: Object to what could be, we are not dealing in possibilities here.

The Court: I think possibly your objection is well taken but I will let him answer, this is before the Court.

A. Well, the most logical thing that could cause the breakage with the gear in perfect condition is the operation of the winches, for instance, the jerking of taking a heavy load in. Steady pull on the winches won't break the preventer nor the manila but jerking could cause it to break, in fact, jerking of heavy loads can break most any kind of gear.

Mr. Pozzi: I move to strike the answer on the same ground.

The Court: I will let it stand at this time, but I will say this, there is no evidence here of any jerking.

Q. What about tight lining? [104]

Mr. Pozzi: The same objection.

The Court: The same ruling, he may answer.

A. Tight lining could cause a breakage as well as if it was done with the power of the winches, or jerking with the power of the winches.

The Court: I do think it is immaterial here but you may go ahead.

(Testimony of Herman Larsen.)

Q. If there is jerking or if there is tight lining will that break gear that is up to full strength?

Mr. Pozzi: The same objection.

The Court: I think all this is immaterial, but I will let him answer.

A. I will say that tight lining,—in the weakest part of any gear, tight lining will cause a break there.

Q. Captain, you have examined this rope, did you look at the piece or section of wire preventer that is introduced in evidence here?

A. I see it there, yes.

Q. You made no metalurgical examination of it?

A. No, I haven't.

Q. From your observation how does it appear, how does its condition appear?

A. This wire you might say is in perfect condition, the wire itself, whatever caused the breaking of this wire must have been something beyond merely the weight of lifting the load, it couldn't have been merely that, because [105] this wire in the condition it is in would withstand the lifting of any ordinary load up to the capacity of the booms.

Mr. Pozzi: I move to strike the answer on the same grounds.

The Court: I will let it stand.

Q. Captain, having looked at the wire and the rope,—first, did you hear the testimony of the metalurgist?

A. Yes, I did.

Q. Assuming that a metalurgical examination

(Testimony of Herman Larsen.)

showed that the wire rope had no defects what would your opinion be as to the cause of the breaking?

Mr. Pozzi: Objected to on the ground that the question has incorrectly stated the testimony of the metalurgist, that the wire had no defect, it was that the part he examined had no defect, as a matter of fact it was just the opposite, and on the further ground that there is no foundation laid. In order for this witness to give an opinion he would have to know the exact angle of the boom and the power of the boom and the condition of the winches, whether or not the winches were doubled or singled out, the height of the ship, the height of the drift——

The Court: I have been very liberal in the trial of this case, but I think I will have to sustain this objection.

Q. Captain, based on your experience, what is the effect of [106] jerking or over-straining of a wire rope as to whether the failure or parting of a wire rope always occurs at the moment it is over-strained or whether a series of over-straining can cause a breaking at a later moment?

Mr. Pozzi: The same objection as previously stated.

The Court: I will allow him to answer.

A. I have found in my experience that a wire and a rope can be damaged by over straining and by jerking and a weakness will later show up where the strain was on the wire or rope.

Q. Under such conditions have you known a

(Testimony of Herman Larsen.)

wire rope to part under what would be a normal or customary lift?

Mr. Pozzi: The same objection.

The Court: He may answer.

A. It is quite true and I have found that if a wire rope were damaged and the damage was not detected and then the usual strain was put upon it, that could cause it to break.

Mr. Wood: That's all.

#### Cross Examination

Q. (By Mr. Pozzi): What do you do right now, Captain, what is your job?

A. I am at home at present, I am standby captain for the West Coast Trans-oceanic, relief Captain.

Q. You have been captain of Liberty ships haven't you?      A. Yes, sir. [107]

Q. What do you mean by doubling up the gear,—the winches on a Liberty ship, not the gear, the winches?

A. Well, they have two gears, what they call the fast and the slow and the heavy lift and ordinary.

Q. And if winches are doubled up they run slower and smoother do they not?

A. They run slower, not always smoother but slower.

Q. What difference is there in the speed, that is in percentage?

A. I don't know,—I just can't tell you the exact percentage.



(Testimony of Herman Larsen.)

Q. On the number two hatch on a Liberty ship when the winches are singled out are the fastest winches you have are they not?

A. That's right.

Q. Those are the big winches and the big drums?

A. That's right.

Q. And they operate rather jerkily don't they?

A. Not always, that depends on the winches, some winches run smooth, it depends on the condition of them.

Q. They run smoother when they are doubled up?

A. That depends on the upkeep of them, sometimes they do and sometimes they don't.

Mr. Pozzi: I think that's all.

(Remarks of Court and Counsel as to the manner of submitting deposition.)

#### DEPOSITION OF JOHN KYRIACOS

was read into the record. [108]

#### Direct Examination

Read by Mr. Brooke:

Q. What is your name? A. John Kyriacos.

Q. What is your home address?

A. Kiaton, Korinthias, Greece.

Q. How old are you? A. I am 53.

Q. Are you a merchant seaman? A. Yes.

Q. How long have you been going to sea?

A. About thirty-five years.

Q. How long have you been going to sea as a licensed officer? A. How long?

(Deposition of John Kyriacos.)

Q. Yes. A. Oh, twenty-five years.

Q. Do you have master's papers? A. Yes.

Q. Have you ever served as a Master?

A. Yes.

Q. What is your present job?

A. Chief Officer.

Q. On which ship?

A. On this ship, the SS Santorini.

Q. What kind of ship is the SS Santorini?

A. It is an American type Liberty ship, she is making around all over the world. [109]

Q. An American Type Liberty ship?

A. Yes.

Q. Were you on the vessel,—I believe it was last Saturday, when a longshoreman was injured?

A. Yes.

Q. You were on the vessel? A. Yes.

Q. Where were you when the accident happened? A. I was in the Saloon.

Mr. Wood: I might interject here,—a saloon on board ship is where they take meals, where meals are served. I mention this because the Court said at the beginning that he wasn't too familiar with some of the terms.

The Court: Don't you hesitate at any time to give me any information you want to.

Q. Having your lunch? A. Yes.

Q. Do you remember approximately what time the accident happened, approximately?

A. Yes, 12:15.

(Deposition of John Kyriacos.)

Q. Where was the vessel at the time of the accident?      A. Alongside, it was alongside.

Q. What is the name of this dock?

A. Coos Bay. [110]

Q. Is it in,—it is the Coos Bay Lumber Company dock, is that correct?      A. Yes.

Q. That is where the vessel is now?

A. Yes.

Q. And that is where it was when the accident happened?      A. Yes.

Q. When the accident happened the vessel was right here?      A. Yes.

Q. Which side of the vessel was to the dock?

A. Port side, the same side as now.

Q. At which hatch did the accident happen?

A. Number two hatch.

Q. How did you learn about the accident?

A. How did I—

Q. Who told you about the accident?

A. The boss did.

Q. Is that the walking boss?      A. Yes.

Q. And did you go out there?      A. Yes.

Q. What did you see?

A. I saw the preventer broken.

Q. On which side of the hatch?

A. On the starboard side.

Q. Was it the forward?      A. Yes, forward.

Q. What was broken?

A. A preventer and rope guy.

Q. And that was on the starboard, offshore boom?      A. Yes.

(Deposition of John Kyriacos.)

Q. What did you do?

A. I gave orders to my crew to break out another preventer and another rope guy.

Q. What did you do with the preventer that broke and the rope guy that broke, did you keep them? A. Yes.

Q. You kept them? A. Yes.

Q. You, yourself kept them? A. Yes.

Q. What have you done with the rope guy and the preventer since that time?

A. I don't understand you.

Q. What have you done with the rope guy and the preventer, since that time?

A. Oh, I got three foot pieces and give them to you.

Q. I will ask you some leading questions since it is hard for you to understand English.

A. Yes, it is hard to understand.

Q. Now, did you take the broken preventer and broken rope guy? A. How is that. [112]

Q. Did you take the broken preventer and the broken rope guy? A. Oh, yes, I take.

Q. Into your custody, into your custody?

A. Yes, I take.

Q. Then did you cut—

A. —Yes, three foot piece.

Q. Did you cut the preventer three feet back from each side of the break?

A. Yes, I cut.

Q. A section three feet long, on each side?

A. Yes.

(Deposition of John Kyriacos.)

Q. And you gave it to me?

A. Yes, I give it to you.

Q. Did you do the same thing with the rope guy?

A. Yes.

Q. What kind of preventer was it, that broke, will you describe it for me?

A. About three quarter inch diameter.

Q. Three quarters of an inch in diameter?

A. Yes.

Q. What kind was it, what kind of material?

A. Steel wire.

Q. How about the rope guy, what was it?

A. It was a rope——

Q. What is its description, was it an inch and a half manila rope?      A. Yes, manila rope.

Q. Was it inch and a half rope?

A. Yes,—oh,—three inches circumference.

Q. Three inches circumference?      A. Yes.

Q. And you have given that to me, also?

A. Yes, I give.

Q. Are you sure that the pieces that you have given me are from each side of where the preventer and the rope guy broke?      A. Yes, I am sure.

Q. Was the preventer that broke, and the rope guy that broke, are they the customary size that is used for preventers and rope guys on these ships?

A. Yes.

Q. And the pieces that you have given me are from each side of where the preventer and the rope guy broke, are you sure of that?      A. Yes.



(Deposition of John Kyriacos.)

Q. Now, in terms of age, what was the condition of the preventer and the rope guy?

A. The condition——

Q. Yes, they were in what condition, were they old?

A. No, not old.

Q. What were they?

A. I buy them, oh, I am not sure, I buy them——

Q. ——Are they new or old?

A. New.

Q. Had they ever been used before on the ship?

A. No, never.

Q. When was the preventer that broke, and the rope guy that broke, when were they put on that starboard boom?

A. Well,——

Q. How many days ago was it put on?

A. I don't understand you.

Q. Was it the day before the accident?

A. I don't understand exactly what you mean.

Q. Can you find the date there? Let the record show that the witness is now referring to his log book, to get the date.

A. The 4th, I put this on.

Q. The preventer and the guy rope?

A. Yes.

Q. On the starboard boom?

A. Yes.

Q. Both were put on brand new on the 4th?

A. Yes.

Q. At what time?

A. At four-thirty.

Q. In the afternoon?

A. Yes.

Q. When,—well, why did you put them on then, why was it necessary?

A. Because we broke the other one.

(Deposition of John Kyriacos.)

Q. The other one had broken? A. Yes.

Q. At the same boom? A. Yes.

Q. Who had put the preventer and the rope guy on the boom? A. I, myself.

Q. You did? A. Yes.

Q. Who had secured the preventer and the rope guy to the rail of the ship?

A. The longshoremen.

Q. Who, after you had secured the preventer and the rope guy to the end of the boom,—you secured them to the boom? A. Yes.

Q. Who, after you had secured the preventer and the rope guy to the end of the boom, who places the booms where they want them for loading?

A. It is about the same place now.

Q. Who does it? A. The longshoremen.

Q. How long are the booms at that hatch, how long are they? A. Well,—

Q. How many feet?

A. The boom is fifty-five feet.

Q. Fifty-five feet? A. Yes.

Q. Did you inspect this new preventer wire that broke when the man got hurt? A. Yes. [116]

Q. And did you inspect it before it was put on?

A. Yes.

Q. How did it look to you?

A. All right, O. K.

Q. Any breaks of any kind? A. No.

Q. Was it in good shape? A. Yes.

Q. Do you remember when the vessel came in here to Coos Bay? A. Yes.

(Deposition of John Kyriacos.)

Q. What was the date that the vessel came in to this dock? A. Well, what time,—

Q. What date,—what day.

A. February 3rd.

Q. February 3, 1955? A. Yes.

Q. And what time, about?

A. Oh, no,—the 4th, I have it here.

Q. What time?

A. At 8:55, no,—8:55 took pilot, and alongside it is about 11 o'clock, and at 1 o'clock the ship is ready for loading.

Q. Starting at 1 o'clock on the 4th?

A. Yes.

Q. And the preventer on the number 2 hatch broke the first time on the afternoon of the 4th?

A. Yes. [117]

Q. Is that right? A. Yes.

Q. And the second time, on the 5th, during the noon hour? A. Yes, yes.

Q. And that is when the longshoreman was hurt? A. Yes, yes.

Q. The same preventer? A. Yes.

Q. And the same rope guy broke too?

A. Yes, yes, the same.

Q. The same position, I mean, not the same rope guy? A. No, no, the same position.

Q. Did you have any cargo on your deck when the vessel came in here? A. Yes, cargo.

Q. What kind of cargo?

A. Wood, from Eureka, California.

Q. From Eureka? A. Yes.

(Deposition of John Kyriacos.)

Q. How high was your deck load?

A. Six feet.

Q. Did you have any upright stanchions supporting the deck load?      A. Yes, yes.

Q. How high do they stand?

A. How high?

Q. Yes.      A. About ten feet high. [118]

Q. Now, we are talking about the preventer and the rope guy that broke when the longshoreman was injured?      A. Yes, yes, I understand.

Q. Did you have occasion to see how much strain was placed on the rope guy and the preventer prior to the accident?

A. Well, I don't understand.

Q. Do you know if they were equalized or not?

A. Yes, yes, equalized.

Q. I want to know whether or not the strain on the preventer and the rope guy was about the same, prior to the accident, equal strain on the rope guy and the preventer?      A. Yes, normal.

Q. Did the longshoremen put it on?

A. Yes.

Q. Did they equalize the strain on the rope guy and the preventer?      A. Yes.

Q. Is that the usual procedure when you are loading lumber?      A. Yes, yes.

Q. When is your vessel going to leave Coos Bay?

A. Tomorrow or tomorrow——

Q. Sunday, do you mean?

A. Sunday or Monday.

Q. Is this a tramp steamer?      A. Yes.

(Deposition of John Kyriacos.)

Q. And as far as you know you won't be coming back here again? A. No, no.

Q. Do you have a little trouble understanding English? [119] A. Yes.

Q. That is why I have been asking you some leading questions, did you understand the questions all right that I have asked you so far?

A. Yes, I understand.

Q. Up to now have you understood the questions that I have asked you?

A. Yes, I understand them.

Mr. Brooke: You may cross examine.

#### Cross Examination

Q. (Read by Mr. Pozzi): Now, you didn't see the accident? A. No.

Q. You were here in the saloon?

A. Yes, saloon.

Q. The first you know about it, the walking boss came in and told you? A. Yes.

Q. How long have you been the first officer of this vessel?

A. I am now between two years,—I am Chief Officer and Captain.

Q. For two years?

A. Yes, for the time being, and before, three years more.

Q. So all together, five years?

A. I am seven years as Captain, in all.

Q. Do you own an interest in this vessel, in this ship? A. What do you say? [120]



(Deposition of John Kyriacos.)

Q. Do you own an interest in this vessel?

A. I do not understand.

Q. Are you an owner of the ship? A. No.

Q. You are not an owner of the ship?

A. No, no, not owner.

Q. Now, this preventer wire that broke, where did you buy that wire?

A. I buy from Rotterdam, New Orleans, Antwerp,—I am not sure where.

Q. You are not sure which one of those ports you purchased the wire?

A. What do you say?

Q. I say do you know, you are not sure at which of those ports you purchased the wire?

A. No.

Q. How many hatches are forward, here?

A. Three.

Q. Three hatches? A. Yes, three.

Q. Do you have a boom for each hatch?

A. Yes.

Q. And you have a preventer wire and rope guy for each hatch? A. Yes, yes.

Q. What type of preventer wire do you have on Number 1 hatch? A. Steel wire rope.

Q. Wire rope? [121] A. Yes.

Q. What size is that wire?

A. Three quarter inch diameter, it is measured in diameter, steel wire and the rope is in circumference.

Q. And the preventer wire at number 1 hatch, has that been changed since this accident occurred?

(Deposition of John Kyriacos.)

A. No, no.

Q. It hasn't? A. No.

Q. Has the preventer on Number three been changed? A. Yes.

Q. When was that changed?

A. One day after we broke number 2.

Q. Why did you change the wire on number 3?

A. Because I say I am afraid if it is, well, you know, I say to my Boatswain to get it down and put one on.

Q. This wire that was replaced on number 3 hatch, is that a different type of wire than you put on number 2? A. No, not different.

Q. It is the same kind of wire?

A. Yes, yes.

Q. This wire that broke on number 2, when this fellow was hurt, where did it break?

A. What time.

Q. No, whereabouts, on the line, itself?

A. It is about three feet up above—about three feet. [122]

Q. It is tied to a cleat on the deck?

A. No, it is up from the deck, like this.

Q. It is tied to the bull rail? A. Yes.

Q. There is a pad eye there? A. Yes.

Q. Is there a similar pad eye on the number one and number 3 hatches? A. Yes.

Q. A similar pad eye? A. Yes.

Q. And it broke at the pad eye, did it?

A. Yes.

Q. It broke right there?

(Deposition of John Kyriacos.)

A. Yes, about three feet—

Q. —You say it broke the day before too?

A. Yes.

Q. Where did it break on that day?

A. I do not remember, I don't remember if it is the same place or not.

Q. You don't know if it broke at the same place?

A. No, no.

Q. It could have been broken at the same place?

A. Yes.

Q. Was the wire that broke on the day before, and the wire that broke on the 5th,—do you understand? [123]

A. Yes, yes.

Q. Were they rigged the same way?

A. No, the one that broke the first day was an old one.

Q. The wire broke first on the 4th?

A. Yes.

Q. When you first came into port?

A. Yes, but that is not the same.

Q. Was that wire, the one that broke on the 4th, was it tied the same way as the one on the 5th?

A. Yes.

Mr. Brooke: Was it tied in the same way?

A. Yes.

Mr. Brooke: The same knots?

A. Yes.

Q. And this wire that broke and hurt this fellow, that was blocked around the pad eye?

A. Yes,—well, you see, this is like this and here is another and it pays from this way like this and

(Deposition of John Kyriacos.)

makes fast here, I don't know if you understand me.

Q. We can't get that in the record, are you saying that this preventer wire didn't go through the pad eye?

A. Through,—I think I can show you.

Mr. Brook: Let the record show that he is trying to draw how the preventer wire was attached.

Q. All right.

A. Here is this, like this and here is this. [124]

Q. That is a cleat?           A. Yes.

Q. All right, go ahead.

A. And we went through here, and wrapped around the cleat here.

Q. Is the cleat forward of the pad eye?

A. Yes.

Q. And it goes through the pad eye first?

A. Yes, is about two feet from here to here, like this. This is the wire, passes through like this and made fast here.

Mr. Brooke: Was that the way it was rigged when the longshoreman got hurt?

A. Yes.

Mr. Brooke: Rigged that way?

A. Yes, this is the bull rail, it is about three feet above the deck.

Q. And this is the pad eye?           A. Yes.

Q. Isn't that on the deck?

A. No, it is on the rail.

Q. Is the cleat on the rail too?

A. Yes, the same. This is the deck of the ship and this is up about three feet, about. This is the

(Deposition of John Kyriacos.)

rail and the same height is this one, and this one too.

Q. Are the preventer wires on number one and number three just the same as this? [125]

A. Not in the same place, another place, but the same as this one.

Q. The same way? A. Yes, yes.

Q. They were rigged the same way?

A. Yes, rigged.

Q. Now, the wire that broke—— A. Yes.

Q. The day you came into port? A. Yes.

Q. On the 4th? A. Yes.

Q. That was the same type of wire that you put back up there only this was new?

A. The same type yes, but not from the same coil.

Q. The same type of wire?

A. Yes, same type.

Q. Was that steel wire? A. Yes.

Q. Three quarters of an inch in diameter?

A. Yes, diameter.

Q. That was a soft type steel wire?

A. No, no, it is strong, it is hard.

Q. It is a hard type wire? A. Yes.

Q. That was the wire that broke when the fellow got hurt? [126] A. I don't understand.

Q. I say that was the wire that broke when this man got hurt? A. Yes.

Q. The preventer wire on number one, was that three quarters or five-eighths?

A. No, three quarters.



(Deposition of John Kyriacos.)

Q. You are sure it was three quarters?

A. Yes, the same.

Q. Did it come off the same coil?

A. No, not the same coil, no, not from the same coil.

Q. The wire on number three was from the same coil, was it?      A. No.

Q. That was from a different coil?

A. Yes.

Q. But they were all the same type of wire.

A. Yes, diameter was three quarters.

Q. Do you ever use a different type of wire for preventer wires?

A. No, no, I explain, I buy coil of wire, that is about 120 fathoms. I cut for 35 fathoms each and make three runners, three runner wires, and the other I use for preventer. Why I am sure on that, it is the same size, the preventer and the runner.

Q. On the day that this fellow was hurt, the preventer wire and the runner wire were the same wire?      A. Yes.

Q. The same size? [127]

A. Yes, and the same coil. And the same on the number two.

Q. Off of the same coil?      A. Yes.

Q. Do you ever use any other size of wire?

A. Size, no, but type, yes, because I take it from American and English and Europe, but the size is the same.

Q. Do you ever use a soft wire?

(Deposition of John Kyriacos.)

A. Sometimes, sometimes they send a coil and I say I no want this one, give me another one.

Q. Sometimes you use soft and sometimes hard?

A. I explain that, in England they make hard, and American is soft.

Q. English is soft and American,—pardon me, English is hard and American is soft?

A. Yes, it is not the same.

Q. Was this soft or hard?           A. Yes.

Q. Which was it?

A. Well, I don't understand.

Q. Was it soft or hard, the one that broke?

A. Soft, oh, no.

Q. It was hard?           A. Yes, hard.

Q. Was that English wire?

A. I not remember, I buy from Rotterdam and Hamburg and New Orleans, and from New Orleans I am sure it is not, perhaps [128] London.

Q. You are sure it wasn't bought in New Orleans?           A. No, not New Orleans.

Q. If it had been bought at New Orleans it would have been soft, probably?           A. Yes.

Q. Can you get soft wire in Rotterdam, can you buy soft wire in Rotterdam?           A. Perhaps.

Q. How do you know it was hard wire then?

A. If I make like this, you see.

Mr. Brooke: You test it with your hands?

A. Yes.

Q. You are sure this was hard wire?

A. Yes, hard.

Q. Do you ever use five-eighths inch wire?

(Deposition of John Kyriacos.)

A. No.

Q. You never use it?

A. Never in the runners.

Q. And never in the preventers?

A. No, I cut the three pieces for runners and the other piece I use for preventer, like I explain.

Q. Now, where is the little diagram that you made, thank you, now this cleat, is that forward or aft of the pad eye?      A. This is forward.

Q. On number two hatch?      A. Yes. [129]

Q. The cleat is forward?      A. Yes.

Q. And the line ran down from the Boom?

A. Yes, down.

Q. And through the pad eye?

A. Yes, and it go this way.

Q. Forward to the cleat?      A. Yes.

Q. It don't run back aft to the cleat?

A. No.

Q. Are the pad eyes and the cleats on number one hold the same way?

A. No, the other side, because the preventer, well,—

Mr. Brooke: At the number 1 hatch the booms are at the after end of that hatch?      A. Yes.

Mr. Brooke: And at the number two they are at the forward end?      A. Yes.

Mr. Pozzi: Then Mr. Todd, who was examining said "I would like to take a look at it,—

Mr. Pozzi: I don't think I have any more questions.

(Deposition of John Kyriacos.)

Redirect Examination

Q. (Read by Mr. Brooke): The preventer that broke, when the longshoreman was injured, you know what I mean? [130] A. Yes, yes.

Q. You have described it as a three quarter inch steel wire rope? A. Yes.

Q. How many strands in that preventer?

A. Six.

Q. In each strand are there smaller wires?

A. Twenty-four.

Q. Twenty-four smaller wires? A. Yes.

Q. The preventers, did you buy them?

A. Yes, from the,—from the—

Q. From the supply house?

A. Yes, the supply house.

Q. They are tested there? A. Yes.

Mr. Brooke: Let the record show that we are taking a short recess to go and look at the preventer wire and see how it is rigged.

No further questions.

Recross Examination

Q. (Read by Mr. Pozzi): Now, on the bull rail where the preventer wire for the number 2 boom was tied— A. Yes, yes.

Q. There is a cleat there? [131] A. Yes.

Q. There are pad eyes both forward and aft of the cleat? A. Yes.

Q. On the day that this accident occurred, through which pad eye was the preventer wire run, the one forward or the one aft of the cleat?

(Deposition of John Kyriacos.)

A. Listen, if the workmen want to put more, well, more starboard, they put forward this way. If they want to get more like this, they put from other side.

Q. When the wire broke——

A. From aft, like this.

Q. Did the preventer wire run through the pad eye that was aft?      A. Yes.

Q. Aft of the cleat?      A. Yes.

Q. And it ran from there to the cleat?

A. Yes.

Q. Did you go out and look at it before it was removed?      A. Yes, yes, I look at it.

Q. It was still tied to the cleat when you saw it?

A. Yes.

Q. And it ran from the after pad eye forward to the cleat?      A. Yes.

Q. Who rigged that?

A. The longshoremen.

Q. None of the crew had anything to do with that? [132]

A. No, no. Sometimes the longshoremen want it starboard more or port side more, sometimes in the middle when they want to work in the middle, and they change.

Q. The longshoremen change it?      A. Yes.

Q. And not the crew?      A. No.

Q. Now, you replaced the preventer wire on Number 2?      A. Yes.

Q. This rope guy, that broke too?      A. Yes.



(Deposition of John Kyriacos.)

Q. When it broke the first time did the rope break too?      A. Yes.

Q. On the 4th?      A. Yes.

Q. Now, you replaced the preventer wire on number two, did you replace that with a different type of wire than you had on there before?

A. I not understand.

Q. After it broke on the date that the man was injured, wait a minute, I am confused myself, it broke on the 4th?      A. Yes.

Q. The first time?      A. Yes.

Q. And you replaced it?      A. Yes. [133]

Q. Did you use the same kind of wire?

A. No, because that was old wire, and I put new wire the second time.

Mr. Brooke: The preventer that broke the first time was an older wire?      A. Yes, older.

Q. Was it soft wire?      A. It was softer.

Q. It was a soft wire?      A. Yes.

Q. The one that broke the first time?

A. Yes.

Q. Did you replace it with the same kind of wire?

A. No, because the new one, the new preventer—

Q. —The first one was softer than the second one?      A. Yes.

Q. The first one was softer than the one that broke when the man was hurt?

(Deposition of John Kyriacos.)

A. Yes. I put the new one to make more stronger, but the stronger one break again.

Mr. Brooke: The second one was stronger?

A. Yes.

Mr. Brooke: It was stronger?

A. I am sure of that.

Mr. Pozzi: No further questions. [134]

### Redirect Examination

Read by Mr. Brooke:

Q. Now, the wires that you have cut from the preventer?      A. Yes, wires.

Q. They came from each side of the break?

A. Yes.

Q. And you have given those to me?

A. Yes.

Q. And the rope guy, the same?      A. Yes.

Q. These are the preventer and the rope guy that were on the number two hatch?      A. Yes.

Q. When the man was hurt?      A. Yes.

Mr. Wood: Now, Your Honor, the rest of this covers the waiver of signature.

Mr. Wood: Before resting, Your Honor, we are still concerned about the other strand of this wire. It was last in Mr. Pozzi's office and we would like to know what the situation is on that.

Mr. Pozzi: Why are you concerned about it counsel?

Mr. Wood: I will state very frankly why we are concerned about it. There were three pieces of this

wire. Mr. Pozzi had three in his office and he [135] had produced two of them, and we think the inference is that he submitted the other for metalurgical examination by an expert, and he failed to call him, and we think that the usual inference is warranted in this case. That inference being that where a party has failed to produce a witness, the inference is that the evidence would not be of any help to him. That is really what we are driving at. I think Mr. Pozzi must have had that wire examined and that explains the absence of the other piece of wire.

The Court: You didn't ask him to produce it?

Mr. Pozzi: No, they did not.

Mr. Brooke: It was listed as a pre-trial exhibit, Your Honor, and it was understood that it would be here. It is generally understood that the parties will bring the exhibits to Court that are listed.

Mr. Pozzi: We listed the wire. I don't think that that makes any difference, they are trying to create some false impression here about a piece of wire. The pieces of wire were all inspected and I gave them to Mr. Brooke, he had his metallurgist look them over, the three pieces, that is in the record here and he is now trying to raise a smoke screen because he doesn't have a case. We had three [136] strands, pieces of three strands, that is correct. We did look them over, that is correct also. We did not run chemical analysis on all three strands, as is obvious. We took one of the three to look it over, that's all. We found out that you can't tell any-

thing, if counsel wants to know we found out that you can't tell that way. He knows it and I know it. It was not listed as three pieces of wire, that I know of, let's see what is listed here,—no, it was not listed. They have given no notice to produce here, and they could have made certain that we would have brought it in.

The Court: There is nothing for the Court to pass on.

Mr. Brooke: What was that, your Honor?

The Court: There is nothing for the Court to pass on.

Mr. Brooke: It is certainly listed as a pretrial exhibit.

Mr. Pozzi: It is not,—are you calling me a liar in Court, you point out where it is listed.

Mr. Brooke: It is listed there as wire cable.

Mr. Pozzi: There are two pieces of wire cable listed, and two pieces have been produced.

Mr. Brooke: May I check and see if our exhibits are all in, your Honor?

The Court: Yes, you may.

Mr. Brooke: If your Honor please, the plastic sections, as prepared by the metalurgist, have not [137] been listed as pretrial exhibits.

The Court: They were admitted.

Mr. Brooke: Yes, but they should be recorded in the Pretrial Order as Exhibit Number 12.

Having read the deposition of Mr. Kyriacos into the record, we do ask that the deposition be made a part of the record.

The Court: It is already in the record, but it may be admitted as an exhibit if you desire.

Mr. Brooke: With that your Honor, the respondent rests.

The Court: Do you have any rebuttal?

Mr. Pozzi: Just about two questions from a witness.

The Court: Very well, you may proceed.

### GLEN TITUS

Called as a witness in rebuttal by the libelant, having heretofore been duly sworn, testifies as follows:

#### Direct Examination

Q. (By Mr. Pozzi): You heard the testimony of Captain Larsen concerning the doubling up of the winches?      A. Yes, I did.

Q. What is the purpose of doubling up the winches?

A. So they will run slower and smoother. [138]

Q. Can you jerk the winches when they are doubled up?

A. Not the American Liberty, the original winches.

Q. Was this the original winch?      A. Yes.

Mr. Pozzi: That's all.

Mr. Brooke: Nothing further of this witness.

Mr. Pozzi: With that the Libelant rests. I would like an opportunity to argue this matter orally before your Honor.

Mr. Wood: I think, your Honor, we would like to call Captain Larsen for one question, I am a



little uncertain as to what Captain Larsen testified on cross examination. If he said on cross examination that you can jerk the gear with the winches in double gear or doubled up, then, of course, he has already testified to it.

Mr. Pozzi: That is what he testified to.

The Court: My recollection is that he testified to that.

Mr. Brooke: As long as the record is clear on that we have no surrebuttal.

Mr. Pozzi: He has already testified that you can.

The Court: Now, I understand that both sides rest?

Mr. Pozzi: That's right, your Honor, we rest.

Mr. Brooke: And we have rested.

The Court: Very well, then we will recess at this time, and we will meet at two o'clock.

2 O'Clock P.M.

(Argument of counsel not reported.)

(Case submitted.) [140]

[Endorsed]: Filed June 10, 1957.

[Endorsed]: No. 15592. United States Court of Appeals for the Ninth Circuit. Glen Titus, Appellant, vs. Madam Cadio G. Sigalas, et al., owners and Pacific Atlantic Steamship Company, charterer of the SS Santorini, etc., Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: June 17, 1957.

Docketed: June 20, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 15592

GLEN TITUS,

Libelant,

vs.

SS SANTORINI, her engines, tackle and gear, and all persons claiming any interest therein, and MADAM CADIO G. SIGALAS, et al., owners, and PACIFIC ATLANTIC STEAMSHIP COMPANY, charterer, Respondents,

SIGALAS AND KULUKUNDIS, Claimant.

STATEMENT OF POINTS AND DESIGNATION OF RECORD TO BE PRINTED

Comes now libelant-appellant pursuant to Rule 17

(6) of the rules of this court, and makes the following:

### Statement of Points

#### I.

That the findings of fact made by the Honorable Chase A. Clark, Judge of the United States District Court for the District of Idaho, after trial of this cause below at Portland, Oregon, were not supported by the evidence received upon said trial.

#### II.

That the conclusions of law made by the Honorable Chase A. Clark, Judge of the said District Court, after trial of this cause below have no basis in fact by reason of the matter stated in point I above.

#### III.

That the Honorable Chase A. Clark, Judge of said Court, should have adopted and entered the findings of fact and conclusions of law proposed by libelant after trial of this cause below.

#### IV.

That the decree made and entered by the Honorable Chase A. Clark, Judge of said District Court, was based upon erroneous findings of fact and conclusions of law, was not supported by the evidence received upon trial of this cause below and was erroneous in dismissing the libel and in denying to libelant recovery of special and general damages.

#### V.

That the issues of fact and law raised by the libel in rem and in personam with foreign attachment

and respondents' and claimant's answer thereto as set forth in the contentions of the parties in the pre-trial order should be tried de novo by this Court upon the record designated as follows:

Designation of Record to Be Printed

Style of the Court.

Names of the Parties, to-wit: Glen Titus, Libelant-Appellant vs. SS Santorini, her engines, tackle and gear, and all persons claiming any interest therein, and Madam Cadio G. Sigalas, et al., owners, and Pacific Atlantic Steamship Company, charterer, Respondents, Sigalas and Kulukundis, Claimant.

Libel in rem and in personam with foreign attachment.

Answer.

Order dated April 18, 1955.

Pretrial order.

Order allowing time to file briefs.

Record of trial on January 17, 1956.

Libelant's brief.

Opinion of Judge Clark.

Proposed findings of fact and conclusions of law (not filed).

Proposed decree (not filed).

Objections and amendments to respondents' proposed findings of fact and conclusions of law.

Letter dated March 1, 1957.

Findings of fact and conclusions of law.

Decree.

Notice of appeal.

Bond for costs on appeal.

Order extending time to docket appeal.

Designation of record on appeal.

Order to forward exhibits to Court of Appeals.

Supplemental designation of record by claimant.

Transcript of docket entries.

Clerk's certificate (including transcript of testimony).

Libelant's proposed findings of fact and conclusions of law and libelant's proposed decree have been forwarded to this Court but were not a part of the record proper because of the failure and refusal of the Honorable Chase A. Clark, Judge of said District Court, to adopt said findings of fact and conclusions of law and to make said proposed decree. It is libelant's request and desire, however, that said proposed findings of fact and conclusions of law and said proposed decree be printed because same are necessary to permit this Court to consider properly the record herein and to consider this appeal.

Respectfully submitted,

PETERSON, POZZI & LENT,  
/s/ By RALPH N. DUNCANSON.

Certificate of Service Attached.

[Endorsed]: Filed June 20, 1957. Paul P. O'Brien,  
Clerk.



[Title of Court of Appeals and Cause.]

STATEMENT OF DESIGNATION OF RECORD TO BE PRINTED SUBMITTED BY CLAIMANT-APPELLEE

Comes now Claimant-Appellee, and for its Supplemental Designation of Record to be printed, designates as follows:

I.

An Order signed by the United States District Court for the District of Oregon on April 18, 1955, and filed April 21, 1955.

Respectfully submitted,

WOOD, MATTHIESSEN, WOOD &  
TATUM,

/s/ JOHN R. BROOKE,

Attorneys for Claimant-Appellee.

Certificate of Service Attached.

[Endorsed]: Filed June 24, 1957. Paul P. O'Brien,  
Clerk.

